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PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY
AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA

# REPORT OF THE PREPARATORY COMMISSION UNDER PARAGRAPH 10 OF RESOLUTION I CONTAINING RECOMMENDATIONS FOR SUBMISSION TO THE MEETING OF STATES PARTIES TO BE CONVENED IN ACCORDANCE WITH ANNEX VI, ARTICLE 4, OF THE CONVENTION REGARDING PRACTICAL ARRANGEMENTS FOR THE ESTABLISHMENT OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

## Volume I

[Report and addenda thereto]

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## Introductory note

The International Tribunal for the Law of the Sea was established by the 1982 United Nations Convention on the Law of the Sea, which contains the Statute of the Tribunal in annex VI thereto. In preparing for the International Tribunal, resolution I, adopted with the Convention by the Third United Nations Conference on the Law of the Sea, established the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea. The Preparatory Commission was mandated, inter alia, to prepare a report containing recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea for submission to the Meeting of States Parties to be convened in accordance with the Statute of the Tribunal. 1/ The Preparatory Commission established at its first session, in addition to its Plenary and the General Committee, four Special Commissions. Special Commission 4 was charged with the preparation of the report containing recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea.

When the examination of the subjects and issues falling within its mandate was well advanced, Special Commission 4 commenced the preparation of its report under paragraph 10 of resolution I of the Third United Nations Conference on the Law of the Sea. In formulating the report the Special Commission first considered a Draft outline. 2/ On the basis of that consideration, a Draft report was formulated. 3/ The Draft report was reviewed and a Provisional report was presented 4/ which included pending issues. 5/ In each case the sequence of the deliberations that preceded preparation of the text in the Special Commission was recorded in the introductory note to the document. The

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1/ The Meeting of States Parties to the Convention is convened in accordance with article 4 of the Statute, annex VI to the Convention.

2/ Draft Outline for the Report of the Preparatory Commission containing recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea (document LOS/PCN/SCN.4/WP.14, dated 19 August 1992).

3/ Draft Report of the Preparatory Commission under paragraph 10 of resolution I containing recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea (document LOS/PCN/SCN.4/WP.15, dated 5 March 1993).

4/ Provisional Report of Special Commission 4 (Draft Report of the Preparatory Commission under paragraph 10 of resolution I containing recommendations for submission to the Meeting of States Parties to be convened in accordance with annex VI, article 4, of the Convention regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea (document LOS/PCN/SCN.4/WP.16, dated 12 October 1993).

5/ The pending issues are noted in the introductory note to the report (LOS/PCN/SCN.4/WP.16).

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succeeding drafts of the report identified the 10 proposed addenda to the report which would constitute working documents for consideration by the Meeting of States Parties. These reflected the results of the work of Special Commission 4, whether formulated by it or at its request, and are an integral part thereof.

A list of attachments to the Provisional report 6/ identifies the relevant core documentation of Special Commission 4 and of the Preparatory Commission which is considered essential to providing a faithful record of the work of the Special Commission, its deliberations, its conclusions and decisions which led to the preparation and presentation of the report. In finalizing the Provisional report it was decided that on certain items and issues there was inadequate time to review working papers to be prepared by the Secretariat. These were to be incorporated in the report as addenda thereto and submitted directly to the Meeting of States Parties, without further review of the issues. 7/ In order to expedite the work of the Commission, delegations were requested to submit their views to the Secretariat for incorporation in the Report, 8/ but no such views were submitted.

In finalizing the work of the Preparatory Commission, the Chairman of the Commission incorporated all the reports of the several special commissions and subsidiary bodies of the plenary into a single report - the Consolidated Provisional Report (document LOS/PCN/130) - and an addendum (document LOS/PCN/130/Add.1), which listed all the documents to be contained in the final report for the International Seabed Authority and for the International Tribunal for the Law of the Sea. 9/ This presentation constituted the communication of the report of the Preparatory Commission on the arrangements for the establishment of the International Tribunal, through its Chairman, to the Meeting of States Parties. 10/

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6/ Footnote 4 supra.

7/ These were issued as LOS/PCN/WP.16/Add.8, Add.9 and Add.10. They included working papers on the Agenda, the draft Provisional Rules of Procedure for the Meeting of States parties, and a Comparative review of alternatives for distribution of seats among Members of the Tribunal.

8/ Eleventh session, Plenary meeting: in considering the draft report on the arrangements for the establishment of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.15), it was noted that, as in the case of the draft provisional report of the Plenary (document LOS/PCN/WP.52), there was inadequate time to consider the addenda to the report at the session. Consequently it was decided that delegates would be allowed to transmit their comments on the addenda and that the comments received from delegations would be attached to the reports as annexes thereto.

9/ These documents have not been published in consolidated form.

10/ See LOS/PCN/27, annex I, para. 1 (d), and sect. II (e). See also LOS/PCN/2, para. 2.

The Draft Budget for the first financial period for the International Tribunal for the Law of the Sea was submitted to the Preparatory Commission at its New York meeting held from 1 to 12 August 1994. Since there was inadequate time to consider this document, the Preparatory Commission decided that it should be submitted to the Meeting of States Parties. That text is reproduced in the present volume.

The Provisional report and the addenda contained in the present volume, as confirmed by the Preparatory Commission, constitute the Report of the Preparatory Commission in making practical arrangements for the establishment of the International Tribunal for the Law of the Sea.

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LOS/PCN/SCN.4/WP.16
12 October 1993

ORIGINAL: ENGLISH

**PREPARATORY COMMISSION FOR THE INTERNATIONAL SEABED AUTHORITY AND FOR THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA**

# PROVISIONAL REPORT OF SPECIAL COMMISSION 4

## (DRAFT REPORT OF THE PREPARATORY COMMISSION UNDER PARAGRAPH 10 OF RESOLUTION I CONTAINING RECOMMENDATIONS FOR SUBMISSION TO THE MEETING OF STATES PARTIES TO BE CONVENED IN ACCORDANCE WITH ANNEX VI, ARTICLE 4, OF THE CONVENTION REGARDING PRACTICAL ARRANGEMENTS FOR THE ESTABLISHMENT OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA)

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## Introductory note

1. Pursuant to resolution I, the Preparatory Commission shall remain in existence until the conclusion of the first session of the Assembly of the Authority. The Preparatory Commission decided on the matters to be dealt with by the Plenary and the Special Commissions as allocated,* and Special Commission 4 was allocated the preparation of recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea.** Having delegated this function to Special Commission 4, the Preparatory Commission reserved to the Plenary the presentation of its report through its Chairman on the arrangements for the establishment of the International Tribunal for the Law of the Sea to the Meeting of States Parties convened for the purpose.*** Consequently, and as decided by Special Commission 4, the present report is provisional. It is the product of the deliberations and decisions of Special Commission 4 in carrying out its mandate. It reflects the results achieved so far and makes reference to issues which remain pending. While reflecting the results, the report should in no way be interpreted as precluding the further consideration of the pending issues.

2. The present provisional report and the addenda, upon their review and approval, will constitute the Report of the Preparatory Commission under paragraph 10 of resolution I of the Third United Nations Conference on the Law of the Sea, to be presented to the Meeting of States Parties. The component reports and final working papers which reflect the results of the work of Special Commission 4, whether formulated by it or at its request, listed as addenda would be an integral part thereof.

3. Following the issuance of the draft outline for the report (LOS/PCN/SCN.4/WP.14), the Preparatory Commission at its tenth-session summer meeting in New York invited participating States to submit their comments on the draft provisional reports of the four Special Commissions and the informal Plenary. The draft report presented as LOS/PCN/SCN.4/WP.15 was formulated pursuant to that decision and took into account the comments received with respect to LOS/PCN/SCN.4/WP.14. The present provisional report of Special Commission 4 takes account of the deliberations and decisions of the Special Commission at the eleventh session on the basis of draft report LOS/PCN/SCN.4/WP.15. In reviewing the draft report, the Special Commission, _inter alia_, noted that some issues were pending.

4. Pending issues on which no agreement was reached are:

(a) Whether there should be one or two or six official working languages of the Tribunal, and consequently what treatment would be accorded to the other languages;

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* LOS/PCN/3, para. 2.

** LOS/PCN/27, annex I, para. 1 (d).

*** LOS/PCN/27, annex I, sect. II (e).

(b) How the scheme for phasing in the Tribunal should be applied.

5. As regards the question of languages, the resolution of the issue would require consequential review and determination regarding the Final Draft Rules of the International Tribunal for the Law of the Sea (Addendum 1); the Final working paper on administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea (Addendum 6); and the Report with proposals concerning the initial financing and budget of the International Tribunal for the Law of the Sea (Addendum 7). Similarly, the manner of application of a scheme for phasing in of the Tribunal would require consequential review and determinations regarding the Final Draft Rules of the Tribunal (Addendum 1); and the Report with proposals concerning the initial financing and budget of the International Tribunal for the Law of the Sea (Addendum 7).

6. A separate list of attachments in the present provisional report (see annex II) identifies the relevant core documentation of the Special Commission and of the Preparatory Commission which are considered essential to providing a faithful record of the work of the Special Commission, its deliberation and its conclusions and decisions which led to the preparation and presentation of the draft report.

7. When the Plenary, at the eleventh session, took up the draft report on the arrangements for the establishment of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.15) for consideration, it was noted that, as in the case of the draft provisional report of the Plenary (document LOS/PCN/WP.52), there was inadequate time to consider the addenda to the report at the session. Consequently it was decided that delegates would be allowed to transmit their comments on the addenda and that the comments received from delegations would be attached to the reports as annexes thereto.

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## INTRODUCTION

1. The present report reflects the work of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea in making practical arrangements for the establishment of the International Tribunal for the Law of the Sea. The Tribunal was established by the 1982 United Nations Convention on the Law of the Sea, which contains the Statute of the Tribunal in annex VI thereto. Resolution I adopted with the Convention by the Third United Nations Conference on the Law of the Sea established the Preparatory Commission and mandated it, inter alia, to prepare a report containing recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea for submission to the Meeting of States Parties to be convened in accordance with the Statute of the Tribunal. 1/ The Preparatory Commission established at its first session, besides its Plenary and the General Committee, four Special Commissions. Special Commission 4 was charged with the preparation of the report containing recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea. 2/ The Preparatory Commission elected Dr. Gunter Goerner (German Democratic Republic) as Chairman of Special Commission 4 and he served from the first session in 1983 to the eighth session in 1990. 3/ On 25 February 1991, the Preparatory Commission elected Mr. Anton Bouteiko (Ukraine) to replace him. Colombia, Greece, Philippines and Sudan were elected as Vice-Chairmen of the Special Commission, constituting, with its Chairman, the Bureau. Dr. Theodore Chalkiopoulos (Greece), Vice-Chairman, acted as Chairman in the absence of the Chairman at the seventh session of the Preparatory Commission held at Kingston, 4/ at the eighth session held in New York 5/ and at the tenth session in Kingston and in New York. 6/

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1/ Annex VI, article 4.

2/ See resolution I, para. 10; and LOS/PCN/27, annex.

3/ He served until the accession of the German Democratic Republic to the Federal Republic of Germany.

4/ The seventh session was held at Kingston, Jamaica, from 27 February 1989 to 23 March 1989.

5/ The resumed eighth session was held in New York from 13 to 31 August 1990.

6/ The tenth session was held at Kingston, Jamaica, from 24 February 1992 to 13 March 1992 and the summer meeting from 10 to 21 August 1992 in New York.

2. The Special Commission adopted its provisional agenda contained in SCN.4/1984/CRP.1 and Rev.1. [7] Its mandate was initially elaborated in SCN.4/WP.1. When considering its work programme the Commission first decided to take up the items listed in paragraph 3 of SCN.4/WP.1, with the addition of Relationship Agreements as referred to in part II of that working paper. The Commission also expressed the need to prepare rules for the Meeting of States Parties and recommendations for the election of members of the Tribunal. It did not consider it appropriate to prepare a comprehensive list of issues and items for its programme of work since additional items might be considered necessary as work progressed. For each session of the Preparatory Commission, the requirements for the programme of work were further elaborated as necessary and priorities established by the Special Commission on the recommendation of its Bureau and the initiative of its Chairman. The method of work was also established and the Commission dealt with the items under its work programme on that basis.

3. The Special Commission prepared the draft outline for the report of the Preparatory Commission containing recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea (SCN.4/WP.14) which was the basis for its consideration of the recommendations of the Preparatory Commission to the Meeting of States Parties. Taking into account the comments received from participating States on the draft outline contained in SCN.4/WP.14, the draft report of the Preparatory Commission under paragraph 10 of resolution I containing recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea as contained herein was considered by the Special Commission. With the adoption by the Preparatory Commission of the present draft report, the final stage in the establishment of the International Tribunal for the Law of the Sea has been commenced with the preparation for the first Meeting of States Parties to the Convention prior to the inauguration of the Tribunal.

## CHAPTER I. JUDICIAL PROCEDURE

### Section 1. Recommendations concerning the draft Rules of the Tribunal

For the purpose of preparing for the International Tribunal to perform its judicial functions at the earliest possible time after entry into force of the Convention, it is desirable that the Meeting of States Parties facilitates the adoption of the rules of the Tribunal.

Therefore

THE PREPARATORY COMMISSION recommends that:

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[7] References to documents of Special Commission 4 are abbreviated throughout this paper for convenience. It should be noted that they all require the prefix LOS/PCN for complete reference purposes. The documents of Special Commission 4 referred to herein are attached hereto and are more fully identified in the list of attachments.

the final draft Rules of the Tribunal formulated by the Commission and its Special Commission 4, addendum 1 hereto, should provide the basis for the determination by the Tribunal of its rules of procedure.

The Special Commission first considered the requirements for the procedural rules of the Tribunal and examined the items listed in SCN.4/WP.1. Account was taken of SCN.4/1984/CRP.2-5 in this connection. Thereafter, the draft Rules of the Tribunal (SCN.4/WP.2); and the supplement to the draft Rules of the Tribunal - on the Prompt Release of Vessels and Crews (SCN.4/WP.2/Add.1): working papers prepared by the Secretariat, were examined by the Special Commission, taking into account the table of concurrence of the draft Rules of the Tribunal (SCN.4/WP.3) and the draft texts proposed for specific provisions (SCN.4/1985/CRP.6, SCN.4/1985/CRP.7-10 and 12-14, SCN.4/1986/CRP.15-18) as reflected in the Chairman's summaries of discussions (SCN.4/L.2 and Add.1 and Add.1/Corr.1, L.3 and Add.1, L.4 and Add.1, L.5 and Add.1).

Thereafter the Special Commission considered the revision of the draft Rules of the Tribunal (SCN.4/WP.2/Rev.1, Parts I and II) prepared by the Secretariat, taking into account the draft texts proposed for specific provisions (SCN.4/1986/CRP.20, SCN.4/1987/CRP.22, SCN.4/1988/23 and Rev.1, 25, 28-30, SCN.4/1989/32 and 37), as reflected in the Chairman's summaries of discussions (SCN.4/L.7 and Add.1, L.9/Add.1, L.10 and Add.1 and Add.1/Corr.1). The Special Commission decided (LOS/PCN/L.53, para. 9) that the Secretariat would formulate the Final Draft Rules of the Tribunal, addendum 1 hereto.

### Section 2. Composition of the Tribunal and its chambers

In connection with the equitable geographical distribution and the representation of the principal legal systems in the composition of the Tribunal and its chambers, the Special Commission expressed the view that firm and detailed rules should not be established by the Preparatory Commission. The deliberations of the Special Commission in this connection are reflected in chapter VI, section 2, below.

### Section 3. Official working languages

The Special Commission exchanged views on the official languages and those in which its pleadings and judgments would be issued as reflected in the Chairman's summary of discussions (SCN.4/L.14, pp. 10 and 11); Chairman's Statement to the Plenary (LOS/PCN/L.86, paras. 6-8); and proposals submitted by delegations (SCN.4/WP.12 and 13). Chapter IV, section 1, below also deals with this question. No agreement was reached among delegations regarding the official working languages of the Tribunal.

### Section 4. Harmonization of jurisprudence

The need to provide a means to achieve harmonization of the jurisprudence of the Tribunal and its chambers was considered. A proposal was made as to how this can be achieved and the deliberations of the Preparatory Commission are reflected in the Chairman's summary of discussions (SCN.4/L.3, paras. 99-100).

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### Section 5. Internal judicial practice

The draft Rules of the Tribunal recognize the requirement for a resolution to be formulated by the Tribunal on its internal judicial practice in a manner consistent with the practice of the International Court of Justice. The deliberations of the Special Commission in this connection are reflected in the Chairman's summary of discussions (SCN.4/L.7, paras. 27-30).

### Section 6. Access by States not parties to the Convention

The terms for access to the Tribunal by States not parties to the Convention would, as necessary, be elaborated by the Tribunal in accordance with annex VI taking into account, where appropriate, the practice of the International Court of Justice regarding the participation of States Parties to the Statute of the Court which are not States Members of the United Nations, as provided in General Assembly resolution 91 (I) of 11 December 1946.

## CHAPTER II. INTERNATIONAL AGREEMENTS

### Section 1. Recommendations concerning the draft Headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany

For the purpose of preparing for the International Tribunal to function at the seat of the Tribunal in Germany, it is desirable that the Meeting of States Parties facilitates the Tribunal and the host country entering into a headquarters agreement.

Therefore

THE PREPARATORY COMMISSION recommends that:

> the final draft Headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany, formulated by the Commission and its Special Commission 4, addendum 2 hereto, should provide the basis for negotiating and entering into such an agreement.

The Special Commission first discussed the requirements for a headquarters agreement (SCN.4/WP.1, para. 7). It also discussed the question of privileges, immunities and facilities in relation to the Tribunal and its work. These discussions took into account the items listed in SCN.4/WP.1, paras. 3 and 5 to 7. Account was also taken of SCN.4/WP.4, which identifies issues for consideration, and also SCN.4/1985/CRP.8 and 9. The summary of this review is contained in the Chairman's summary of discussions (SCN.4/L.9). Thereafter, a draft Headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany (SCN.4/WP.5, Parts I and II) was prepared by the Secretariat at the request of the Special Commission (LOS/PCN/L.47) and deliberated on, as reflected in the Chairman's summary of discussions (SCN.4/L.11 and Add.1).

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A revised draft Headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany (SCN.4/WP.5/Rev.1 and Corr.1) prepared by the Secretariat, taking into account the deliberations in the Special Commission, the draft texts proposed for specific provisions and the suggestions of a drafting nature, and providing compromise texts on issues where agreement was not reached, was considered and approved by the Special Commission in accordance with its deliberations. [8]

The Special Commission decided that the Secretariat would formulate the final draft Headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany, addendum 2 hereto, on the basis of the decision of the Special Commission (LOS/PCN/L.101, para 4; SCN.4/1992/CRP.45) and harmonized to the extent possible with the final draft revised Protocol on the Privileges and Immunities of the Tribunal. [9]

## Section 2. Recommendations concerning the draft Protocol on the Privileges and Immunities of the Tribunal

For the purpose of providing the requisite privileges and immunities for the effective functioning of the International Tribunal, it is desirable that the Meeting of States Parties adopts an international protocol that may be adhered to by all States.

Therefore

THE PREPARATORY COMMISSION recommends that:

> the final draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea, formulated by the Commission and its Special Commission 4, addendum 3 hereto, should provide the basis for negotiating and entering into such a protocol.

The Commission discussed the question of privileges, immunities and facilities in relation to the Tribunal and its work, taking into account the items listed in SCN.4/WP.1, paragraphs 3 and 5 to 7. Account was also taken of SCN.4/WP.4, which identified issues for consideration, and also SCN.4/1985/CRP.8 and 9. The summary of this review is contained in the Chairman's summary of discussions (SCN.4/L.9).

Thereafter, a draft Protocol on the Privileges and Immunities of the International Tribunal (SCN.4/WP.6) was prepared by the Secretariat at the request of the Commission (LOS/PCN/L.53, para. 19 (c)). This working paper was reviewed article by article by the Special Commission, as reflected in the Chairman's summary of discussions (SCN.4/L.13 and Add.1).

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8/ Reflected in the Chairman's summary of discussions (to be issued).

9/ See the requirement recorded in paragraph 38 of the Final Act of the Third United Nations Conference on the Law of the Sea (A/CONF.62/121).

Subsequently, a revised draft Protocol on the Privileges and Immunities of the International Tribunal (SCN.4/WP.6/Rev.1 and Corr.1 and 2) prepared by the Secretariat, taking into account the deliberations in the Special Commission, the draft texts proposed for specific provisions (SCN.4/1988/CRP.24, 26 and 27; SCN.4/1989/CRP.31 and 33-35), and the suggestions of a drafting nature, and providing compromise texts on issues where agreement was not reached (LOS/PCN/L.91, para. 10), was considered and formulated by the Special Commission in accordance with its deliberations. 10/

## CHAPTER III. RELATIONSHIP ARRANGEMENTS

### Section 1. Recommendations concerning relationship arrangements between the United Nations and the International Tribunal for the Law of the Sea

In order to enable the International Tribunal and the United Nations to have and develop a relationship of effective cooperation, thereby facilitating the objectives of the Tribunal and the United Nations, it is desirable that the Meeting of States Parties facilitates the Tribunal and the United Nations entering into a relationship agreement.

Therefore

THE PREPARATORY COMMISSION recommends that:

> the final draft Agreement on Cooperation and Relationships between the United Nations and the International Tribunal for the Law of the Sea, formulated by the Commission and its Special Commission 4, addendum 4 hereto, should provide the basis for negotiating and entering into such an agreement.

The Commission first discussed the issues (SCN.4/WP.1, paras. 8-12). The relevant issues contained in the working paper titled "Issues concerning relationship agreements between the International Tribunal for the Law of the Sea and other international organizations" (SCN.4/WP.7), prepared by the Secretariat at the request of the Special Commission (LOS/PCN/L.61, para. 19 (c)), were first discussed, taking into account the issues listed in SCN.4/1989/CRP.36.

The draft relationship arrangements between the United Nations and the International Tribunal for the Law of the Sea (SCN.4/WP.9 and Add.1), prepared by the Secretariat pursuant to the request of the Special Commission (LOS/PCN/L.76, para. 12 (b)), was reviewed by the Special Commission, as reflected in the Chairman's summary of discussions (SCN.4/L.15). The final draft Relationship Agreement between the United Nations and the International Tribunal for the Law of the Sea was formulated by the Secretariat, addendum 4 hereto, on the basis of the decision of the Special Commission (LOS/PCN/L.107)

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10/ Reflected in the Chairman's summary of discussions (to be issued).

with due consideration for the views expressed in the Commission regarding the need for maximum economy in establishing the Tribunal and its functioning while maintaining the highest possible level of efficiency (LOS/PCN/L.86, para. 5).

### Section 2. Use of the United Nations laissez-passer by the Tribunal

The use of the United Nations laissez-passer by the Tribunal and its officials was considered by the Special Commission in its deliberations, as reflected in the Chairman's summary of discussions (SCN.4/L.11/Add.1). 11/

### Section 3. Relationship arrangement between the International Tribunal for the Law of the Sea and the International Seabed Authority

For the purpose of addressing the role of the Tribunal in relation to the activities of the International Seabed Authority, it is desirable that an appropriate relationship arrangement be entered into between them.

Therefore

THE PREPARATORY COMMISSION submits:

> a report on the deliberations and suggestions of the Special Commission concerning the principles governing relationship arrangements between the International Tribunal and the International Seabed Authority, prepared by the Secretariat, addendum 5 hereto.

The Commission first discussed the issues (SCN.4/WP.1, paras. 8-12). The relevant issues contained in the working paper titled "Issues concerning relationship agreements between the International Tribunal for the Law of the Sea and other international organizations" (SCN.4/WP.7), prepared by the Secretariat at the request of the Special Commission (LOS/PCN/L.61, para. 19 (c)), were first discussed, taking into account the issues listed in SCN.4/1989/CRP.36.

The working paper on principles governing relationship arrangements between the International Tribunal and the International Seabed Authority (SCN.4/WP.10), prepared by the Secretariat was reviewed by the Special Commission. 12/

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11/ Further discussions reflected in the Chairman's summary of discussions (to be issued).

12/ The deliberations and suggestions of the Special Commission are reflected in the Chairman's summary of discussions (to be issued).

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### Section 4. Supplementary arrangements between the International Tribunal for the Law of the Sea and the International Court of Justice

Supplementary arrangements between the Tribunal and the International Court of Justice were not formulated by the Special Commission. Consequent upon the communication from the Registrar of the International Court of Justice, the Special Commission decided that it would not be appropriate for it to consider such relationship arrangements.

## CHAPTER IV. ADMINISTRATIVE ARRANGEMENTS

### Section 1. Recommendations concerning administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea

### and

### Recommendations concerning the scheme for the initial phasing-in of the establishment of the International Tribunal for the Law of the Sea

The degree to which the Tribunal can fulfil its purposes will be determined by its institutional structure, the effectiveness of its administration, including budgetary and personnel matters, and the efficiency of its services.

Therefore

THE PREPARATORY COMMISSION recommends that:

> the final working paper on administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea, prepared by the Secretariat, addendum 6 hereto, should provide the basis for the deliberations and determination of the Meeting of States Parties.

The working paper titled "Administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea (SCN.4/WP.8), prepared by the Secretariat at the request of the Special Commission (LOS/PCN/L.76, para. 12 (a)), was based on the organizational structure of the Tribunal as set out in the Convention and taking into account the structure of existing international tribunals and courts and their experiences based on the use of two working languages, with the pleadings and judgments to be issued in all six working languages of the United Nations after completion of each application, case or advisory opinion. The addendum, "Supplementary cost estimates reflecting alternatives as to one or six official working languages" (SCN.4/WP.8/Add.1 and Corr.1), and the further addendum, "Scheme to phase in the establishment of the International Tribunal for the Law of the Sea" (SCN.4/WP.8/Add.2 and Corr.1), were also prepared by the Secretariat at the request of the Special Commission (LOS/PCN/L.76, para. 12 (a)). While no conclusions were reached, the deliberations of the Special Commission were reflected in the Chairman's summary of discussions (SCN.4/L.14 and LOS/PCN/L.81, paras. 5-9). 13/

The Special Commission decided to formulate for the Meeting of States Parties the final draft working paper on administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea, addendum 6 hereto, on the basis of the decision of the Special Commission (LOS/PCN/L.91, para. 8), containing relevant elements relating to the scheme for phasing in the establishment of the Tribunal and the alternative schemes concerning the implications of the number of official languages and working languages.

As regards the languages of the Tribunal, the Commission conducted an exchange of views, as reflected in the Chairman's statement to the plenary (LOS/PCN/L.86, paras. 6-8), and informal consultations were conducted among delegations on this question. Subsequently, proposals were submitted by the delegation of Cuba on behalf of the Group of Latin American and Caribbean Countries (SCN.4/WP.12) and by the delegations of Austria, Belgium, Canada, Côte d'Ivoire, Czechoslovakia, France, Greece, India, Poland, Senegal, Switzerland and Tunisia (SCN.4/WP.13 and Corr.1). No agreement was reached among delegations regarding the official working languages of the Tribunal.

### Section 2. Draft financial rules and staff regulations

As regards the principles to govern the financial rules of the Tribunal and its staff regulations, it was the understanding of the Special Commission that the Secretariat would prepare the requisite documentation to be submitted to the Meeting of States Parties for its consideration (LOS/PCN/L.81, paras. 15-17).

### Section 3. Initial financing and budget of the International Tribunal for the Law of the Sea

For the early functioning of the Tribunal and in order to ensure the requisite financing, it is desirable that the Meeting of States Parties determines an appropriate arrangement.

Therefore

THE PREPARATORY COMMISSION submits:

> a report with proposals concerning the initial financing and budget of the International Tribunal for the Law of the Sea prepared by the Secretariat, addendum 7 hereto, for the deliberations and determination of the Meeting of States Parties.

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13/ The further deliberations of the Special Commission are reflected in the Chairman's summary of discussions (to be issued).

The working paper (SCN.4/WP.11) prepared by the Secretariat at the request of the Special Commission (LOS/PCN/L.91) was based on existing precedents and experiences in establishing international organizations. The Commission reviewed the working paper. 11/ The Special Commission decided to formulate a report with proposals concerning the initial financing and budget of the International Tribunal for the Law of the Sea, addendum 7 hereto, based on the deliberations of the Special Commission and containing relevant elements relating to the scheme for phasing in the Tribunal, as decided by the Special Commission (LOS/PCN/L.107).

## CHAPTER V. THE PERMANENT HEADQUARTERS OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

### Section 1. Recommendations concerning the location and site for the headquarters of the International Tribunal for the Law of the Sea

For the purpose of preparing for the International Tribunal for the Law of the Sea to establish its permanent headquarters at the site offered by the host country, in an appropriate environment, it is desirable that the Meeting of States Parties endorses the arrangements for the same.

Therefore

THE PREPARATORY COMMISSION, having taken note that:

> the host country, Germany, has notified the Commission that the location of the permanent headquarters of the Tribunal would be at the site offered in the Free and Hanseatic City of Hamburg, situated in the Nienstedten suburb of Hamburg-Altona (more fully described in SCN.4/L.8), conveys the same to the Meeting of States Parties.

### Section 2. Recommendations concerning the building requirements and facilities of the International Tribunal for the Law of the Sea provided by the host country

For the purpose of preparing for the permanent headquarters of the International Tribunal for the Law of the Sea with the necessary facilities provided by the host country for the most effective discharge of the functions of the Tribunal, it is desirable that the Meeting of States Parties takes note of the appropriate arrangements for the same.

Therefore

THE PREPARATORY COMMISSION recommends that:

> the Meeting of States Parties takes note of the planning and arrangements made in this connection by the host country, including the specifications provided in SCN.4/L.16 and Add.1.

/...

The Preparatory Commission and Special Commission 4 had received reports from the host country on the designation of the site in Hamburg and the progress made in evaluating requirements and planning for the building and equipment needs of the Tribunal, including indications as to site, building, equipment and facilities being provided to the Tribunal by the host country. The relevant documents and reports reviewed and taken note of in this connection are:

(a) Preliminary information on the establishment of facilities for international courts and tribunals (SCN.4/1986/CRP.19, dated 8 April 1986);

(b) Brief progress report on the preparations for the housing of the International Tribunal for the Law of the Sea in Hamburg - submitted by the delegation of the Federal Republic of Germany (SCN.4/L.6, dated 2 September 1986);

(c) Letter dated 9 February 1987 from the Chairman of the delegation of the Federal Republic of Germany addressed to the Special Representative of the Secretary-General for the Law of the Sea (LOS/PCN/80, dated 12 March 1987);

(d) Second report on practical arrangements for the installation of the International Tribunal for the Law of the Sea at Hamburg - submitted by the delegation of the Federal Republic of Germany (SCN.4/L.8, dated 13 March 1987);

(e) Report of the Chairman on the visit by the Bureau of Special Commission 4 and officials of the United Nations Secretariat to the Federal Republic of Germany, 24-28 August 1987 (SCN.4/L.12, dated 21 March 1988);

(f) Letter dated 15 March 1989 from the Chairman of the delegation of the Federal Republic of Germany addressed to the Special Representative of the Secretary-General for the Law of the Sea (LOS/PCN/106, dated 17 March 1989);

(g) Report on the progress of work dated 13 March 1991 concerning building requirements and facilities for the International Tribunal for the Law of the Sea in Hamburg - Statement of the Parliamentary State-Secretary H.E. Mr. Rainer Funke, Ministry of Justice of the Federal Republic of Germany (SCN.4/1991/CRP.40, dated 15 March 1991);

(h) Report of the delegation of the Federal Republic of Germany on the building requirements and facilities for the International Tribunal for the Law of the Sea in Hamburg (SCN.4/L.16, dated 9 March 1992).

While these reports and the information provided do not contain precise descriptions as to furniture and equipment, the objective of the host country is to hand over a building in a state that is ready for use. This would include the equipment for heating, lighting, telephones, telefax, interpreters' booths, sanitary and electronic installations and ventilation equipment for special rooms. Storage, filing and cloakroom facilities in the relevant offices and basic furniture such as desks, filing equipment, trolleys, reception tables, soft furnishings, chairs, furniture for sittings and meeting rooms, archive and library shelving and equipment for the restaurant area are contemplated as coming within the furnished facility to be provided. It would not include such items as typewriters, copy machines and reading lights as well as special furniture, e.g., safes and private furnishings for the Caretaker's flat.

/...

### Section 3. Recommendations concerning the requirements and facilities necessary to supplement those provided by the host country

For the purpose of preparing for the permanent headquarters of the International Tribunal for the Law of the Sea with the necessary facilities in addition to those provided by the host country, it is desirable that the Meeting of States Parties makes appropriate arrangements for the same.

Therefore

THE PREPARATORY COMMISSION recommends that:

> the Meeting of States Parties, in addition to taking note of the planning and arrangements made in this connection by the host country, evaluates the needs and determines the necessary arrangements to supplement those provided by the host country.

The Preparatory Commission and Special Commission 4 received reports from the host country specifying the progress made in evaluating requirements and planning for the building and providing for the equipment needs of the Tribunal, including facilities and furnishings to be provided by it. The relevant documents and reports taken note of in this connection are identified in section 2 above. The Meeting of States Parties would have to evaluate such items of furniture and equipment to be provided by the host country as referred to therein as well as the office and data-processing equipment and other operational accessories that would need to be provided for.

## CHAPTER VI. FIRST MEETING OF STATES PARTIES

### Section 1. Provisional agenda and rules of procedure for the Meeting of States Parties

For the purpose of constituting the International Tribunal early to perform its central role in the settlement of disputes relating to the law of the sea following the entry into force of the Convention, it is desirable that the relevant decisions for the functioning of the Meeting of States Parties be taken and that it proceeds with the election of the members of the Tribunal.

Therefore

THE PREPARATORY COMMISSION submits:

1. The provisional agenda for the Meeting of States Parties prepared by the Secretariat, addendum 8 hereto;

2. The provisional rules of procedure for the Meeting of States Parties prepared by the Secretariat, 14/ addendum 9 hereto. It is understood that the provisional rules may be adopted for the conduct of its business and that they would be examined in due course with a view to the adoption of permanent rules of procedure for subsequent Meetings of States Parties.

## Section 2. Election of the members of the Tribunal

In view of the requirement of the Convention that the first election of the members of the Tribunal shall be held within six months of the date of entry into force of this Convention, it is essential that the election should take place during the first Meeting of States Parties. The Secretary-General of the United Nations whose function it is, under article 4 of the Statute of the Tribunal, would issue the invitations to States Parties for the nomination of candidates for election as members of the Tribunal at least three months before the date of election, would prepare a list of all persons thus nominated to be submitted to States Parties within the time prescribed and would communicate the same to the Meeting of States Parties.

In connection with the geographical distribution and the representation of the principal legal systems among the members of the Tribunal in its composition and in the composition of its chambers, the Preparatory Commission expressed the view that firm and detailed rules should not be established by it. However, the principles to be applied in making such determinations would be needed. The Preparatory Commission considered it useful for relevant proposals and recommendations to be made for consideration by the Meeting of States Parties 15/ and the Secretariat was, therefore, requested to draw up a comparative table illustrating the alternatives for distribution of the six additional seats after fulfilling the minimum geographical representation requirement.

Therefore

THE PREPARATORY COMMISSION submits for consideration:

a comparative table illustrating alternatives for the distribution of the six additional seats among members of the Tribunal after fulfilling the minimum geographic representation requirement, prepared by the Secretariat, addendum 10 hereto.

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14/ The Chairman's Statement to the plenary (LOS/PCN/L.81, paras. 16 and 17).

15/ Refer SCN.4/L.1.

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## Annex

## LIST OF ADDENDA

1. Final draft Rules of the International Tribunal for the Law of the Sea (prepared by the Secretariat as a revision of the revised draft Rules of the Tribunal (SCN.4/WP.2/Rev.1, Parts I and II) on the basis of the conclusions of the Special Commission).

2. Final draft Headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany (prepared by the Secretariat as a revision of the revised draft Headquarters Agreement (SCN.4/WP.5/Rev.1) on the basis of the conclusions of the Special Commission).

3. Final draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea (prepared by the Secretariat as a revision of the revised draft Protocol on the Privileges and Immunities of the International Tribunal (SCN.4/WP.6/Rev.1) on the basis of the conclusions of the Special Commission).

4. Final draft Agreement on Cooperation and Relationships between the United Nations and the International Tribunal for the Law of the Sea (prepared by the Secretariat as a revision of the draft Agreement on Cooperation and Relationships between the United Nations and the International Tribunal for the Law of the Sea (SCN.4/WP.9) on the basis of the conclusions of the Special Commission).

5. Report on principles governing relationship arrangements between the International Tribunal for the Law of the Sea and the International Seabed Authority (prepared by the Secretariat taking into account the consideration of SCN.4/WP.10 - Principles governing a relationship arrangement between the International Tribunal for the Law of the Sea and the International Seabed Authority) on the basis of the deliberations of the Special Commission.

6. Final working paper on administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea (prepared by the Secretariat on the basis of the deliberations and conclusions of the Special Commission based on SCN.4/WP.8 and Add.1 and 2).

7. Report with recommendations concerning the initial financing and budget of the International Tribunal for the Law of the Sea (prepared by the Secretariat on the basis of the deliberations and conclusions of the Special Commission in reviewing SCN.4/WP.11 - Issues concerning the initial financing and budget of the International Tribunal for the Law of the Sea).

8. Provisional agenda for the First Meeting of States Parties to the Convention, convened in accordance with annex VI, article 4, of the Convention (prepared by the Secretariat).

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9. Provisional rules of procedure for the Meeting of States Parties convened in accordance with annex VI, article 4, of the Convention (prepared by the Secretariat).

10. Comparative review of alternatives for distribution of seats among members of the Tribunal (prepared by the Secretariat).

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LOS/PCN/SCN.4/WP.16/Add.
19 January 1994

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY
AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 4

# PROVISIONAL REPORT OF SPECIAL COMMISSION 4

(DRAFT REPORT OF THE PREPARATORY COMMISSION UNDER PARAGRAPH 10 OF RESOLUTION I CONTAINING RECOMMENDATIONS FOR SUBMISSION TO THE MEETING OF STATES PARTIES TO BE CONVENED IN ACCORDANCE WITH ANNEX VI, ARTICLE 4, OF THE CONVENTION REGARDING PRACTICAL ARRANGEMENTS FOR THE ESTABLISHMENT OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA)

## Addendum

(Final draft Rules of the Tribunal)

(Working paper by the Secretariat)

(LOS/PCN/SCN.4/WP.2/Rev.2)

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## Explanatory note

1. The final draft Rules of the Tribunal contained herein was prepared pursuant to the decision of Special Commission 4 (LOS/PCN/L.53, para. 9). The present working paper initially constituted addendum 1 to document LOS/PCN/SCN.4/WP.15 (draft report of the Preparatory Commission under paragraph 10 of resolution I containing recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea), as referred to in the introductory note thereto, first paragraph. Pursuant to the decision of the Preparatory Commission, the draft report was reviewed and revised. The revision is titled "Provisional Report of Special Commission 4 (draft report of the Preparatory Commission under paragraph 10 of resolution I containing recommendations for submission to the meeting of States Parties to be convened in accordance with annex VI, article 4, of the Convention regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea)" (LOS/PCN/SCN.4/WP.16). The present working paper constitutes addendum 1 to LOS/PCN/SCN.4/WP.16, the Provisional Report of Special Commission 4.

2. The Special Commission first considered the requirements for the procedural rules of the Tribunal and examined the items listed in document LOS/PCN/SCN.4/WP.1. Account was taken of LOS/PCN/SCN.4/1984/CRP.2 to 5 in this connection. Thereafter, the Special Commission considered draft texts on the basis of the working paper entitled "Draft Rules of the Tribunal" (document LOS/PCN/SCN.4/WP.2 of 27 July 1984) and the supplement to the Draft Rules of the Tribunal - on the Prompt Release of Vessels and Crews (LOS/PCN/SCN.4/WP.2/Add.1 of 25 March 1985): Working papers, prepared by the Secretariat at the request of the Special Commission, were examined taking into account the table of concurrence of the draft Rules of the Tribunal (LOS/PCN/SCN.4/WP.3) and the draft texts proposed for specific provisions (LOS/PCN/SCN.4/1985/CRP.6, SCN.4/1985/CRP.7-10 and 12-14, and SCN.4/1986/CRP.15-18). The Special Commission conducted an article-by-article examination of these draft rules at the summer 1985 meeting as its first session and through the second to third sessions and the intervening meetings. In examining the formulations in the draft, the Special Commission addressed the issues, the appropriate precedents (particularly that of the International Court of Justice) and the special requirements for the Tribunal. It was always intended and understood that "the general procedures for the functioning of the [T]ribunal and its powers are on the lines of the Statute of the International Court of Justice and other international judicial tribunals. 1/ To remain consistent with this guideline, which was adopted by the Special Commission, the Rules of the Tribunal should as far as possible follow the practice of the International Court of Justice and the usage in its Rules of Court.

3. The Chairman's summary of discussions on these deliberations is to be found in documents LOS/PCN/SCN.4/L.1; L.2 and Add.1; L.2/Add.1/Corr.1; L.3 and Add.1; L.4 and Add.1; and L.5 and Add.1.

4. The Commission also carried out an exchange of views on the participation of entities other than States in cases before the Tribunal or

/...

its Seabed Disputes Chamber. In this context too it reviewed the issues, the appropriate precedents and the special requirements. It identified the need for, and the character of, adjustments to the working paper that would be required to cover such cases. The summary of these discussions is contained in documents LOS/PCN/SCN.4/L.1 and L.5/Add.1.

5. The Special Commission further examined other supplementary matters that had not been included in the draft rules and which had arisen or had been referred to in the course of discussions. This is reflected in LOS/PCN/SCN.4/L.5/Add.1.

6. At the third session, after completing its article-by-article reading of the draft rules, the Commission requested the Secretariat to prepare a revision thereof. The directions given to the Secretariat by the Special Commission required the incorporation of agreed textual changes in the working paper, the elaboration of additional rules on additional matters that needed regulation and the formulation of texts by the Secretariat, including the provision of compromise texts for issues on which there was no prevailing agreement in the Special Commission or when harmonization with other working papers was required. The revised draft was submitted in two parts (LOS/PCN/SCN.4/WP.2/Rev.1 (Part I) and (Part II)).

7. The Special Commission reviewed the revised drafts and the draft texts proposed thereto (LOS/PCN/SCN.4/1986/CRP.20, LOS/PCN/SCN.4/1987/CRP.22, LOS/PCN/SCN.4/1988/CRP.23 and Rev.1, CRP.25 and CRP.28-30) at the fourth (11 August-5 September 1986), fifth (30 March-16 April and 27 July-21 August 1987), sixth (14 March-8 April and 15 August-2 September 1988) and seventh (27 February-23 March 1989 and 14 August-1 September 1989) sessions and intervening meetings. The discussions are reflected in the Chairman's summaries (LOS/PCN/SCN.4/L.7 and Add.1; L.9/Add.1; and L.10 and Add.1 and Add.1/Corr.1).

8. The present document was prepared by the Secretariat following the same procedure and pursuant to the decision of the Special Commission (LOS/PCN/L.53, para. 9). All the articles of the Rules of the Tribunal have been incorporated into one document.

## Notes

1/ Memorandum by the President of the Third United Nations Conference on the Law of the Sea on document A/CONF.62/WP.9 (Informal single negotiating text), Official Records of the Third United Nations Conference on the Law of the Sea, vol. V (United Nations publication, Sales No. E.76.V.8), document A/CONF.62/WP.9/Add.1, para. 30.

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# FINAL DRAFT RULES OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

## *Preamble*

*The International Tribunal for the Law of the Sea*,

*Having regard* to the relevant provisions of the United Nations Convention on the Law of the Sea,

*Having regard* in particular to the Statute of the International Tribunal for the Law of the Sea, annexed thereto,

*Acting* in pursuance of article 16 of the Statute,

*Adopts* the following Rules of the Tribunal, which shall come into force on ...

## PART I

## INTRODUCTION

### *Article 1*

### *Use of terms*

For the purposes of these Rules:

(1) "Convention" means the United Nations Convention on the Law of the Sea;

(2) "Statute" means the Statute of the International Tribunal for the Law of the Sea, annex VI of the Convention;

(3) "States Parties" shall have the same meaning as defined in article 1 of the Convention;

(4) "international organization" shall have the same meaning as defined in article 1 of annex IX of the Convention, unless otherwise specified;

(5) "expert" means a person called at the instance of a party to a dispute or at the instance of the Tribunal to present testimony in the form of expert opinions, based on his special knowledge, skills, experience or training;

(6) "expert appointed under article 289 of the Convention" means a person appointed in accordance with that article to sit with the Tribunal;

(7) "Member" means an elected member of the Tribunal as referred to in article 2 of the Statute and article 2 of these Rules;

/..

(8) "Member ad hoc" means a person chosen under article 17 of the Statute to participate as a Member of the Tribunal for the purpose of a particular case;

(9) "Member ad hoc of the Chamber" means a person chosen under article 17, paragraph 4, of the Statute to participate as a Member of the Chamber for the purpose of a particular case;

(10) "Authority" means the International Seabed Authority;

(11) "Enterprise" means the organ of the Authority referred to in article 158, paragraph 2, of the Convention.

## PART II

## THE TRIBUNAL

### Section A. Members, Members ad hoc and experts appointed under article 289 of the Convention

### Subsection 1. The Members

### Article 2

1. The Members of the Tribunal are elected in accordance with articles 2 to 6 of the Statute.

2. For the purposes of a particular case, the Tribunal may also include upon the bench one or more persons chosen under article 17 of the Statute to sit as Members ad hoc.

### Article 3

1. The term of office of Members of the Tribunal elected at a triennial election shall begin to run from the (... day and month of first election ...) 1/ in the year in which the vacancies to which they are elected occur.

2. The term of office of a Member of the Tribunal elected to replace a Member whose term of office has not expired shall run from the date of the election for the remainder of such term.

### Article 4

1. The Members of the Tribunal, in the exercise of their functions, are of equal status, irrespective of age, priority of election or length of service.

2. The Members of the Tribunal shall, except as provided in paragraphs 4 and 5 of this article, take precedence according to the date on which their respective terms of office began, as provided for by article 3 of these Rules

3. Members of the Tribunal whose terms of office began on the same date shall take precedence in relation to one another according to seniority of age.

4. A Member of the Tribunal who is re-elected to a new term of office which is continuous with his previous term shall retain his precedence.

5. The President and the Vice-President of the Tribunal, while holding these offices, shall respectively take precedence before all other Members of the Tribunal.

6. The Member of the Tribunal who, in accordance with the foregoing paragraphs, takes precedence next after the President and the Vice-President is in these Rules designated the "Senior Member of the Tribunal". If that Member is unable to act, the Member of the Tribunal who is next after him in precedence and able to act is considered as Senior Member.

## Article 5

1. The solemn declaration to be made by every Member of the Tribunal in accordance with article 11 of the Statute shall be as follows:

> "I solemnly declare that I will perform my duties and exercise my powers as a Member of the Tribunal honourably, faithfully, impartially and conscientiously and that I will maintain and preserve the secrecy of any confidential information coming to my knowledge as a consequence of my membership even after the expiry of my term of office."

2. This declaration shall be made at the first public sitting at which the Member of the Tribunal is present. Such sitting shall be held as soon as practicable after his term of office begins and, if necessary, a special sitting shall be held for the purpose.

3. A Member of the Tribunal who is re-elected shall make a new declaration only if his new term is not continuous with his previous one.

## Article 6

1. A Member of the Tribunal deciding to resign shall address a letter of resignation communicating his decision to the President, and the resignation shall take effect on the receipt of that letter as provided in article 5, paragraph 4, of the Statute.

2. If the Member of the Tribunal deciding to resign from the Tribunal is the President, he shall address a letter of resignation communicating his decision to the Tribunal through the Vice-President, or failing him the Seni

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Member, and the resignation shall take effect on receipt of that letter as provided in article 5, paragraph 4, of the Statute.

### Article 7

In any case in which the application of article 9 of the Statute is under consideration, the Member of the Tribunal concerned shall be so informed by the President or, if the circumstances so require, by the Vice-President, in a written statement which shall include the grounds therefor and any relevant evidence. He shall subsequently, at a private meeting of the Tribunal specially convened for the purpose, be afforded an opportunity of making a statement, of furnishing any information or explanations he wishes to give, and of supplying answers, orally or in writing, to any questions put to him. At a further private meeting, at which the Member of the Tribunal concerned shall not be present, the matter shall be discussed; each Member of the Tribunal shall state his opinion, and if requested a vote shall be taken.

## Subsection 2. Members ad hoc

### Article 8

1. Members ad hoc, chosen under article 17 of the Statute for the purposes of particular cases, shall be admitted to sit on the bench of the Tribunal in the circumstances and according to the procedure indicated in article 19, paragraph 2, articles 40, 41, 42, article 107, paragraph 2, and article 137, paragraph 3, of these Rules.

2. They shall participate in the examination of the case for which they have been chosen and in the decision, on terms of complete equality with the other Members on the bench.

3. Members ad hoc shall take precedence after the elected Members of the Tribunal and in order of seniority of age.

### Article 9

1. The solemn declaration to be made by every Member ad hoc in accordance with articles 11 and 17, paragraph 6, of the Statute shall be as set out in article 5, paragraph 1, of these Rules.

2. This declaration shall be made at a public sitting in the case in which the Member ad hoc is participating. If the case is being dealt with by a chamber of the Tribunal, the declaration shall be made in the same manner in that chamber.

3. Members ad hoc shall make the declaration in relation to each case in which they are participating, even if they have already done so in a previous case, but shall not make a new declaration for a later phase of the same case.

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### Subsection 3. Experts appointed under article 289 of the Convention

### Article 10

1. In any dispute involving scientific or technical matters, the Tribunal may, in accordance with article 289 of the Convention, either upon the request of a party made not later than the closure of the written proceedings or, proprio motu, decide, for the purpose of the dispute, to appoint two or more experts to sit with it without the right to vote. The Tribunal may consider a later request prior to the closure of the oral proceedings, if appropriate in the circumstances of the case.

2. When the Tribunal so decides, the President shall take steps to obtain all the information relevant to the choice of such experts and shall also consult the relevant list prepared in accordance with annex VIII, article 2, of the Convention.

3. Such experts shall be selected in consultation with the parties to the dispute and chosen preferably from the relevant list referred to in paragraph 2.

4. Such experts shall be appointed by secret ballot and by a majority of the votes of the Members and Members ad hoc composing the Tribunal for the case.

5. The same powers shall belong to the chambers provided for by article 15 of the Statute and to the presidents thereof, and may be exercised in the same manner.

6. Before entering upon their duties, such experts shall make the following solemn declaration at a public sitting:

> "I solemnly declare that I will perform my duties as an expert honourably, impartially and conscientiously, that I will faithfully observe all the provisions of the Statute and of the Rules of the Tribunal, and that I will maintain and preserve the secrecy of any confidential information coming to my knowledge as a consequence of my sitting with the Tribunal, even after the termination of my functions."

## Section B. The Presidency

### Article 11

1. The term of office of the President and that of the Vice-President of the Tribunal shall begin to run from the date on which the terms of office of the Members of the Tribunal elected at a triennial election begin in accordance with article 3 of these Rules.

2. The elections to the presidency and vice-presidency of the Tribunal shall be held on that date or as soon as possible thereafter. The former President,

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if still a Member of the Tribunal, shall continue to exercise his functions until the election to the presidency has taken place.

## Article 12

1. If, on the date of the election to the presidency, the former President is still a Member of the Tribunal, he shall conduct the election. If he has ceased to be a Member of the Tribunal, or is unable to act, the election shall be conducted by the Member of the Tribunal exercising the functions of the presidency by virtue of article 14, paragraph 1, of these Rules.

2. The election shall take place by secret ballot, after the presiding Member of the Tribunal has declared the number of affirmative votes necessary for election; there shall be no nominations. The Member of the Tribunal obtaining the votes of a majority of the Members composing it at the time of the election shall be declared elected, and shall enter forthwith upon his functions.

3. The new President shall conduct the election of the Vice-President either at the same or at the following meeting. The provisions of paragraph 2 of this article shall apply equally to this election.

## Article 13

The President shall preside at all meetings of the Tribunal; he shall direct the work and supervise the administration of the Tribunal.

## Article 14

1. In the event of a vacancy in the presidency or of the inability of the President to exercise the functions of the presidency, these shall be exercised by the Vice-President, or failing him, by the Senior Member.

2. When the President is precluded by a provision of the Statute or of these Rules either from sitting or from presiding in a particular case, he shall continue to exercise the functions of the presidency for all purposes save in respect of that case.

3. The President shall take the measures necessary in order to ensure the continuous exercise of the functions of the presidency at the seat of the Tribunal. In the event of his absence, he may, so far as is compatible with the Statute and these Rules, arrange for these functions to be exercised by the Vice-President, or failing him, by the Senior Member.

## Article 15

If a vacancy in the presidency or the vice-presidency occurs before the date when the current term is due to expire under article 12, paragraph 1, of

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the Statute and article 11, paragraph 1, of these Rules, the Tribunal shall decide whether or not the vacancy shall be filled during the remainder of t term.

## Section C. The Seabed Disputes Chamber

### Article 16

1. The composition and functioning of the Seabed Disputes Chamber and its ad hoc chambers shall be in accordance with section 4 of the Statute and in parts V and VI of these Rules.

2. The provisions of these Rules relating to proceedings before the Tribunal shall apply mutatis mutandis in proceedings before the Seabed Disputes Chamber, unless otherwise provided in parts V and VI of these Rule

## Section D. Special chambers

### Article 17

1. The Chamber of Summary Procedure to be formed annually under article 1 paragraph 3, of the Statute shall be composed of five Members of the Tribun comprising the President and Vice-President of the Tribunal, acting ex officio, and three other Members elected in accordance with article 20, paragraph 1, of these Rules. In addition, two Members of the Tribunal shal be elected annually to act as substitutes.

2. The election referred to in paragraph 1 of this article shall be held soon as possible after the (... day and month of first election ...) 1/ in each year. The members of the Chamber shall enter upon their functions on election and continue to serve until the next election: they may be re-elected.

3. If a member of the Chamber is unable, for whatever reason, to sit in a given case, he shall be replaced for the purposes of that case by the senio in precedence of the two substitutes.

4. If a member of the Chamber resigns or otherwise ceases to be a member, his place shall be taken by the senior in precedence of the two substitutes who shall thereupon become a full member of the Chamber and be replaced by election of another substitute. Should vacancies exceed the number of available substitutes, elections shall be held as soon as possible in respe of the vacancies still existing after the substitutes have assumed full membership and in respect of the vacancies in the substitutes.

### Article 18

1. When the Tribunal decides to form one or more of the standing special chambers provided for in article 15, paragraph 1, of the Statute, it shall

determine the particular category of disputes for which each chamber is formed, the number of its members, the period for which they will serve, the date at which they will enter upon their duties and the number of substitutes.

2. The members of such chambers shall be elected in accordance with article 20, paragraph 1, of these Rules from among the Members of the Tribunal, having regard to any special knowledge, expertise or previous experience which any of the Members of the Tribunal may have in relation to the category of case the chamber is being formed to deal with.

3. If a member of the chamber is unable, for whatever reason, to sit in a given case, he shall be replaced for the purposes of that case by the senior in precedence of the two substitutes.

4. The Tribunal may decide upon the dissolution of a chamber, but without prejudice to the duty of the chamber concerned, to finish any cases pending before it.

## Article 19

1. A request for the formation of an ad hoc special chamber to deal with a particular case, as provided for in article 15, paragraph 2, of the Statute, may be filed at any time until the closure of the written proceedings. Upon receipt of a request made by one party, the President shall ascertain whether the other party assents.

2. When the parties have agreed, the President shall ascertain their views regarding the composition of the chamber, and shall report to the Tribunal accordingly. He shall also take such steps as may be necessary to give effect to the provisions of article 17, paragraph 4, of the Statute.

3. The Tribunal shall determine, with the approval of the parties, the Members who are to constitute the chamber. The same procedure shall be followed as regards the filling of any vacancy that may occur on the chamber.

4. Members of a chamber formed under this article who have been replaced, in accordance with article 5 of the Statute following the expiration of their terms of office, shall continue to sit in all phases of the case, whatever the stage it has then reached.

## Article 20

1. Elections to the chambers referred to in articles 17 and 18 shall take place by secret ballot. The Members of the Tribunal obtaining the largest number of votes constituting a majority of the Members of the Tribunal composing it at the time of the election shall be declared elected. If there are more Members of the Tribunal receiving the requisite majority than there are places, the President shall draw lots as between those with the lowest equal number of votes. If necessary to fill vacancies, more than one ballot shall take place, such ballot being limited to the number of vacancies that

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remain to be filled. In elections to the chambers, to the extent applicable, due regard shall be paid to the provisions of article 2, paragraph 2, of the Statute.

2. If a chamber when formed includes the President or Vice-President of the Tribunal, or both of them, the President or Vice-President, as the case may be, shall preside over that chamber. In any other event, the chamber shall elect its own president by secret ballot and by a majority of votes of its Members. The Member of the Tribunal who, under this paragraph, presides over the chamber at the time of its formation shall continue to preside so long as he remains a Member of that chamber.

3. The president of a chamber shall exercise, in relation to cases being dealt with by that chamber, all the functions of the President of the Tribunal in relation to cases before the Tribunal. The President of the Tribunal shall take such steps as may be necessary to give effect to the provisions of article 17, paragraph 4, of the Statute to the chambers.

4. If the president of a chamber is prevented from sitting or from acting as president, the functions of the presidency shall be assumed by the Member of the chamber who is the senior in precedence and able to act.

## Section E. Internal functioning of the Tribunal

### Article 21

The internal judicial practice of the Tribunal shall, subject to the provisions of the Convention, the Statute and these Rules, be governed by any resolutions on the subject adopted by the Tribunal. 2/

### Article 22

1. The quorum specified by article 13, paragraph 1, of the Statute applies to all meetings of the Tribunal.

2. Members of the Tribunal shall hold themselves permanently available to exercise their functions and shall attend all such meetings, unless they are absent on leave as provided for in paragraph 4, prevented from attending by illness, or for other serious reasons duly explained to the President, who shall inform the Tribunal.

3. Members ad hoc are likewise bound to hold themselves at the disposal of the Tribunal and to attend all meetings held in the case in which they are participating. They shall not be taken into account for the calculation of the quorum.

4. The Tribunal shall fix the dates and duration of the judicial vacations and the periods and conditions of leave to be accorded to individual Members of the Tribunal, having regard in both cases to the state of its general list and to the requirements of its current work.

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5. Subject to the same considerations, the Tribunal shall observe the public holidays customary at the place where the Tribunal is sitting.

6. In case of urgency the President may convene the Tribunal at any time.

### Article 23

1. The deliberations of the Tribunal shall take place in private and remain secret. The Tribunal may however at any time decide in respect of its deliberations on other than judicial matters to publish or allow publication of any part of them.

2. Only Members, Members ad hoc, and if the Tribunal deems necessary, any experts appointed in accordance with article 289 of the Convention and article 10 of these Rules, take part in the Tribunal's judicial deliberations. The Registrar, or his deputy, and other members of the staff of the Registry as may be required shall be present. No other person shall be present except by permission of the Tribunal.

3. The minutes of the Tribunal's judicial deliberations shall record only the title or nature of the subjects or matters discussed, and the results of any vote taken. They shall not record any details of the discussions nor the views expressed, provided however that any Member or Member ad hoc is entitled to require that a statement made by him be inserted in the minutes.

## PART III

## THE REGISTRY

### Article 24

1. The Tribunal shall elect its Registrar by secret ballot from amongst candidates proposed by Members of the Tribunal. The Registrar shall be elected for a term of seven years and may be re-elected.

2. The President shall give notice of a vacancy or impending vacancy to Members of the Tribunal, either forthwith upon the vacancy arising, or, where the vacancy will arise on the expiration of the term of office of the Registrar, not less than three months prior thereto. The President shall fix a date for the closure of the list of candidates so as to enable nominations and information concerning the candidates to be received in sufficient time.

3. Nominations shall indicate the relevant information concerning the candidate, and in particular information as to his age, nationality, present occupation, university qualifications and any previous experience in law and the law of the sea, diplomacy or the work of international organizations.

4. The candidate obtaining the votes of the majority of the Members of the Tribunal composing it at the time of the election shall be declared elected.

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### Article 25

The Tribunal shall elect a Deputy Registrar; it may also elect an Assistant Registrar, if considered necessary to carry out the functions relating to the Seabed Disputes Chamber. The provisions of article 24 of these Rules shall apply to their elections and terms of office.

### Article 26

Before taking up their duties, the Registrar, the Deputy Registrar and the Assistant Registrar shall make the following solemn declaration at a meeting of the Tribunal:

> "I solemnly declare that I will perform the duties incumbent upon me as Registrar (Deputy Registrar and Assistant Registrar, as the case may be) of the International Tribunal for the Law of the Sea in all loyalty, discretion and good conscience, that I will faithfully observe all the provisions of the Statute and of the Rules of the Tribunal, and that I will maintain and preserve the secrecy of any confidential information coming to my knowledge as a consequence of holding such office, even after my separation from service."

### Article 27

1. The staff members of the Registry shall be appointed by the Tribunal on proposals submitted by the Registrar. Appointments to such posts as the Tribunal shall determine may however be made by the Registrar with the approval of the President.

2. The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

3. Before taking up his duties, every staff member shall make the following solemn declaration before the President, the Registrar being present:

> "I solemnly declare that I will perform the duties incumbent upon me as an official of the International Tribunal for the Law of the Sea in all loyalty, discretion and good conscience, that I will faithfully observe all the provisions of the Statute and of the Rules of the Tribunal, and that I will maintain and preserve the secrecy of any confidential information coming to my knowledge as a consequence of holding such office, even after separation from service."

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## Article 28

1. The Registrar, in the discharge of his functions, shall:

(a) be the regular channel of communications to and from the Tribunal, and in particular shall effect all communications, notifications and transmission of documents required by the Convention, the Statute or by these Rules and ensure that the date of dispatch and receipt thereof may be readily verified;

(b) keep, under the supervision of the President, and in such form as may be laid down by the Tribunal, a general list of all cases, entered and numbered in the order in which the documents instituting proceedings or requesting an advisory opinion are received in the Registry;

(c) have the custody of the declarations accepting the jurisdiction of the Tribunal made by entities other than States Parties in accordance with article 32, paragraph 2, and article 33, paragraph 2, of these Rules, and transmit certified copies thereof to all States Parties, to such other States as shall have deposited declarations, and to the Secretary-General of the United Nations and the Secretary-General of the International Seabed Authority. He shall also maintain duly certified copies of all declarations, revocations or withdrawals thereof and notifications deposited with the Secretary-General of the United Nations under articles 287 and 298 of the Convention;

(d) maintain duly certified copies of all agreements conferring jurisdiction on the Tribunal and submitted in accordance with article 33 of these Rules, and transmit copies thereof to all States Parties, to the Secretary-General of the United Nations and to the Secretary-General of the International Seabed Authority. He shall also transmit copies to such other States and to entities other than States that are parties to the agreement or agreements with respect to which such agreements have been deposited with the Registrar or declarations have been made under the terms of articles 32 and 33;

(e) maintain copies of declarations accepting the jurisdiction of other forums for the settlement of disputes in accordance with article 287 of the Convention, article 7 of annex IX thereto, revocations thereof, and declarations of optional exceptions in accordance with article 298 of the Convention and notices of revocation or withdrawal thereof;

(f) transmit to the parties of the dispute copies of all pleadings and documents annexed upon receipt thereof in the Registry. He shall certify such copies;

(g) communicate to the Government of the State in which the Tribunal or a chamber is sitting, or is to sit, and any other Governments which may be concerned, the necessary information as to the persons from time to time entitled, under the Statute and the relevant agreements, to privileges, immunities or facilities;

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(h) be present, in person or by his deputy, at meetings of the Tribunal, and of the chambers, and be responsible for the preparation of minutes of such meetings. He may designate an official of the Registry to fulfil these functions at meetings of the Seabed Disputes Chamber;

(i) make arrangements for such provision or verification of translations and interpretations into the Tribunal's official languages as th Tribunal may require;

(j) sign all judgments, advisory opinions and orders of the Tribunal and the minutes referred to in subparagraph (h);

(k) be responsible for the reproduction, printing and publication of the Tribunal's judgments, advisory opinions and orders, the pleadings and statements, and minutes of public sittings in cases and of such other documents as the Tribunal may direct to be published;

(l) be responsible for all administrative work and in particular for the accounts and financial administration in accordance with the financial procedures of the Tribunal;

(m) deal with inquiries concerning the Tribunal and its work;

(n) assist in maintaining relations between the Tribunal and Authority, the International Court of Justice and the other organs of the United Nations, its related agencies, other forums for the settlement of disputes established under article 287 of the Convention, and international bodies and conferences concerned with the codification and progressive development of international law, in particular law of the sea;

(o) ensure that information concerning the Tribunal and its activities is made accessible to Governments, the highest national courts of justice, professional and learned societies, legal faculties and schools of law, and public information media;

(p) have custody of the seals and stamps of the Tribunal, of the archives of the Tribunal, and of such other archives as may be entrusted to the Tribunal.

2. The Tribunal may at any time entrust additional functions to the Registrar.

3. In the discharge of his functions the Registrar shall be responsible to the Tribunal.

## Article 29

1. The Deputy Registrar shall assist the Registrar, act as Registrar in the latter's absence and, in the event of the office becoming vacant, exercise th functions of Registrar until the office has been filled.

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2. If both the Registrar and the Deputy Registrar are unable to carry out the duties of Registrar, the President shall appoint an official of the Registry to discharge those duties for such time as may be necessary. If both offices are vacant at the same time, the President, after consulting the Members of the Tribunal, shall appoint an official of the Registry to discharge the duties of Registrar pending an election to that office.

## Article 30

1. The Registry shall comprise the Registrar, the Deputy Registrar, and such other staff as shall be appointed and take office pursuant to article 27 as the Registrar shall require for the efficient discharge of his functions.

2. The Tribunal shall prescribe the organization of the Registry, and shall for this purpose request the Registrar to make proposals.

3. Instructions for the Registry shall be drawn up by the Registrar and approved by the Tribunal.

4. The staff of the Registry shall be subject to Staff Regulations drawn up by the Registrar, and approved by the Tribunal.

## Article 31

1. The Registrar may resign from office with two months' notice tendered in writing to the President. He may be removed from office only if, in the opinion of two thirds of the Members of the Tribunal, he has either become permanently incapacitated from exercising his functions or has committed a serious breach of his duties.

2. Before a decision to remove him is taken under this article, the Registrar shall be informed by the President of the action contemplated, in a written statement which shall include the grounds therefor and any relevant evidence. He shall subsequently, at a private meeting of the Tribunal, be afforded an opportunity of making a statement, of furnishing any information or explanations he wishes to give, and of supplying answers, orally or in writing, to any questions put to him. He may be represented by counsel at such meetings.

3. The Deputy Registrar and other staff may resign from office with one month's notice tendered in writing to the President through the Registrar. They may be removed from office only on the same grounds and by the same procedure as specified in paragraphs 1 and 2 of this article.

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# PART IV

## PROCEEDINGS IN DISPUTES

### Section A. Declarations, agreements, communications and notices

### Subsection 1. Declarations and agreements

### Article 32

1. Duly certified copies of declarations deposited with the Secretary-General of the United Nations accepting the jurisdiction of the Tribunal in accordance with article 287 of the Convention, article 7 of annex IX thereto, and any notice of revocation thereof shall be maintained with the records of the Tribunal by the Registrar.

2. An entity other than a State Party to which the dispute settlement procedures are open in accordance with article 291, paragraph 2 of the Convention, article 20, paragraph 2, and article 21 of the Statute, and which is party to a dispute submitted to the Seabed Disputes Chamber, shall make a declaration to be deposited with the Registrar accepting the jurisdiction of the Seabed Disputes Chamber, in accordance with the Convention, and with the terms and subject to the conditions of the Statute and these Rules, and undertaking to comply in good faith with the decisions of the Chamber and to accept the obligations under article 296 of the Convention.

### Article 33

1. Duly certified copies of the agreements referred to in article 288, paragraph 2, of the Convention, article 20, paragraph 2, articles 21 or 22 of the Statute, accepting the jurisdiction of the Tribunal or its Seabed Disputes Chamber as the case may be, shall be deposited with the Registrar.

2. A State which is not a State Party but is a party to such an agreement conferring jurisdiction on the Tribunal shall make a declaration to be deposited with the Registrar, accepting the jurisdiction of the Tribunal or its Seabed Disputes Chamber as the case may be, in accordance with the Convention, and with the terms and subject to the conditions of the Statute and these Rules and with the agreement conferring jurisdiction, and undertaking to comply in good faith with the decisions of the Tribunal and to accept the obligations under article 296 of the Convention. Such a declaration shall not be required if the agreement contains express provisions fulfilling the conditions of such declarations.

3. An entity other than a State which is a party to such an agreement conferring jurisdiction on the Tribunal, and to which the dispute settlement procedures are open in accordance with article 291, paragraph 2, of the Convention, article 20, paragraph 2, and article 21 of the Statute shall make a declaration to be deposited with the Registrar, accepting the jurisdiction of the Seabed Disputes Chamber, in accordance with the Convention, and with

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the terms and subject to the conditions of the Statute and these Rules, and undertaking to comply in good faith with the decisions of the Chamber and to accept all the obligations under article 296 of the Convention. Such a declaration shall not be required if the agreement contains express provisions fulfilling the conditions of such declarations.

### Article 34

1. All questions as to the validity or the effect of a declaration made or of an agreement deposited under the terms of articles 32 and 33 shall be decided by the Tribunal or its Seabed Disputes Chamber as the case may be.

2. The original declarations made under the terms of articles 32, paragraph 2, and 33, paragraphs 2 and 3, and the copies of agreements referred to in article 33, paragraph 1, of these Rules shall, in accordance with the practice of the Tribunal, be kept in the custody of the Registrar and copies thereof transmitted to all States Parties, to the Secretary-General of the United Nations and to the Secretary-General of the International Seabed Authority. Copies shall also be transmitted to such other States and to entities other than States that are parties to the agreement or agreements, with respect to which such agreements have been deposited with the Registrar or declarations have been made under the terms of articles 32 and 33.

3. For the purposes of this part, a certified copy of a document shall bear an attestation by or on behalf of the custodian of the original or the party submitting it as being a true and accurate copy thereof.

## Subsection 2. Communications and notices

### Article 35

All communications to the Tribunal under these Rules shall be addressed to the Registrar unless otherwise stated. Any request made by a party shall likewise be addressed to the Registrar unless made in open court in the course of the oral proceedings.

### Article 36

1. For the service of all notices upon persons, natural or juridical, other than the agents, counsel, and advocates, the Tribunal shall apply direct to the Government of the State upon whose territory the notice has to be served.

2. The service of notices upon entities other than States shall be as follows:

(a) in the case of intergovernmental organizations, the International Seabed Authority or the Enterprise, the Tribunal shall direct all communications to the competent body or executive head of such organization at its headquarters location;

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(b) in the case of entities referred to in article 153, paragraph 2 (b), of the Convention, the Tribunal shall apply direct to the Government of the sponsoring State referred to in that article;

(c) in the case of entities referred to in resolution II, paragraph 1 (a), of the Third United Nations Conference on the Law of the Sea, the Tribunal shall apply direct to the Government of the certifying State referred to in paragraph 1 (c) thereof.

3. The same provisions shall apply whenever steps are to be taken to procure evidence on the spot.

## Section B. The composition of the Tribunal for particular cases

### Article 37

1. If the President of the Tribunal is a national of one of the parties in a case, a national of a State member of an international organization which is a party in a case, or of the same nationality as an entity other than a State which is a party in a case, he shall not exercise the functions of the presidency in respect of that case. The same rule applies to the Vice-President, or to any Member, when called on to act as President.

2. The Member of the Tribunal who is presiding in a case on the date on which the Tribunal convenes for the oral proceedings shall continue to presid in that case until completion of the current phase of the case, notwithstanding the election in the meantime of a new President or Vice-President. If he should become unable to act, the presidency for the case shall be determined in accordance with article 14 of these Rules, and on the basis of the composition of the Tribunal on the date on which it convenes for the oral proceedings.

### Article 38

Except as provided in article 19 of these Rules, Members of the Tribunal who have been replaced, in accordance with article 5, paragraph 3, of the Statute following the expiration of their terms of office, shall discharge th duty imposed upon them by that paragraph by continuing to sit until the completion of any phase of a case in respect of which the Tribunal convenes for the oral proceedings prior to the date of such replacement.

### Article 39

1. In case of any doubt arising as to the application of article 8, paragraph 1, of the Statute or in case of a disagreement between the Member concerned and the President as to the application of article 8, paragraphs 2 and 3, of the Statute, the President shall inform the other Members of the Tribunal. The matter shall be settled by the decision of the majority of th

other Members present in accordance with article 8, paragraph 4, of the Statute.

2. If a party desires to bring to the attention of the Tribunal facts which it considers to be of possible relevance to the application of the provisions of article 8 of the Statute, but which it believes may not be known to the Tribunal, that party shall communicate confidentially such facts to the President in writing, who shall in turn inform the other Members.

## Article 40

1. If a party proposes to exercise the power conferred by article 17 of the Statute to choose a Member ad hoc in a case, it shall notify the Tribunal of its intention as soon as possible. If the name and nationality of the Member selected are not indicated at the same time, the party shall, not later than two months before the time-limit fixed for the filing of the counter-memorial, inform the Tribunal of the name and nationality of the person chosen and supply brief biographical details. The Member ad hoc may be of a nationality other than that of the party which chooses him.

2. If a party proposes to abstain from choosing a Member ad hoc, on condition of a like abstention by the other party, it shall so notify the Tribunal which shall inform the other party. If the other party thereafter gives notice of its intention to choose, or chooses, a Member ad hoc, the time-limit for the party which has previously abstained from choosing a Member may be extended up to 30 days by the President.

3. A copy of any notification relating to the choice of a Member ad hoc shall be communicated by the Registrar to the other party, which shall be requested to furnish, within a time-limit not exceeding 30 days to be fixed by the President, such observations as it may wish to make. If within the said time-limit no objection is raised by the other party, and if none appears to the Tribunal itself, the parties shall be so informed.

4. In the event of any objection or doubt, the matter shall be decided by the Tribunal, if necessary after hearing the parties.

5. A Member ad hoc who has accepted appointment but who becomes unable to sit may be replaced in the same manner as laid down for appointments under the foregoing paragraphs subject to such time-limits as may be fixed by the President.

6. If and when the reasons for the participation of a Member ad hoc are found no longer to exist, he shall cease to sit on the bench.

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## Article 41

1. If the Tribunal finds that two or more parties are in the same interest and therefore are to be reckoned as one party only, and that there is no Member of the Tribunal of the nationality of any one of these parties upon t bench, the Tribunal shall fix a time-limit within which they may jointly choose a Member ad hoc.

2. Should any party amongst those found by the Tribunal to be in the same interest allege the existence of a separate interest of its own, or put forward any other objection, the matter shall be decided by the Tribunal, if necessary after hearing the parties.

## Article 42

1. If a Member of the Tribunal having the nationality of one of the partie is or becomes unable to sit in any phase of a case, that party shall thereupo become entitled to choose a Member ad hoc within a time-limit to be fixed by the Tribunal, or by the President if the Tribunal is not sitting.

2. Parties in the same interest shall be deemed not to have a Member of on of their nationalities upon the bench if the Member of the Tribunal having o of their nationalities is or becomes unable to sit in any phase of the case.

3. If the Member of the Tribunal having the nationality of a party becomes able to sit not later than the closure of the written proceedings in that phase of the case, that Member of the Tribunal shall resume his seat on the bench in the case.

## Article 43

1. For the purpose of exercising the power conferred by article 17 of the Statute, the Authority and any other international organization of a universa character or the Enterprise shall not be considered as having a nationality and Members of the Tribunal shall not be considered as being nationals of any member State of such an organization for the purpose of applying articles 40 to 42 of these Rules. Such an organization may exercise the power to appoint a Member ad hoc of any nationality it chooses, subject to the provision in article 3, paragraph 1, of the Statute.

2. Articles 40 to 42 shall, subject to paragraphs 3 to 5 hereunder, apply _mutatis mutandis_ to an international organization and to entities having more than one nationality, as in the case of a partnership or consortium of entities from several States, or entities effectively controlled by more than one State or its nationals.

3. Where an international organization is a party to a case, and more than one Member of the Tribunal as constituted for the case is a national of a State member of such international organization, then the President in consultation with the parties may request specified Members of the Tribunal

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who have the nationality of member States of such international organization to withdraw from the bench. Such organization may not thereafter exercise the power conferred by article 17 of the Statute to appoint a Member ad hoc and the other party may appoint Members ad hoc in a corresponding number to the remaining Members who are nationals of member States of the organization which shall include any Member of the Tribunal of its nationality sitting with the bench constituted for that case.

4. Should an international organization allege the existence of separate interests between any of its member States whose nationals are upon the bench, and the interests of the organization for the purpose of the case, then the matter shall be decided by the other Members of the Tribunal who are not of the nationality of States members of the organization, if necessary after hearing the parties. The appointment of Members ad hoc by the other party under paragraph 3 shall be reduced to a number corresponding to the different interests determined by the Tribunal.

5. Where an entity having more than one nationality, as in the case of a partnership or consortium of entities from several States, or entities effectively controlled by more than one State or its nationals, is party to a case, and one or more of the Members of the Tribunal constituted for the case is of any of those nationalities, then such party may not exercise the power to appoint a Member ad hoc and the other party may appoint Members ad hoc in a corresponding number which shall include any Member of the Tribunal of its nationality sitting with the bench constituted for that case.

6. In any case referred to in paragraph 3 or 5 above, the international organization or other entity concerned may request that any Member or Members of the Tribunal as constituted for the case of the same nationality as its member States or component entities be not included in the composition of the bench for the case.

## Section C. Proceedings before the Tribunal

### Subsection 1. Institution of proceedings

### Article 44

1. When proceedings before the Tribunal are instituted by means of an application addressed as specified in article 24, paragraph 1, of the Statute, the application shall indicate the party making it, the party against which the claim is brought, and the subject of the dispute.

2. The application shall specify as far as possible the legal grounds upon which the jurisdiction of the Tribunal is said to be based; it shall also specify the precise nature of the claim, together with a succinct statement of the facts and grounds on which the claim is based.

3. The original of the application shall be signed either by the agent of the party submitting it, or by the diplomatic representative of that party in the country in which the Tribunal has its seat, or by some other duly

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authorized person. If the application bears the signature of someone other than such diplomatic representative, the signature must be authenticated by the latter or by the competent governmental authority.

4. The Registrar shall forthwith transmit to the respondent a certified copy of the application.

5. When the applicant has accepted jurisdiction and proposes to found the jurisdiction of the Tribunal upon a consent thereto yet to be given or manifested by the other party to the dispute, the application shall be transmitted to that party. It shall not however be entered in the General List, nor any action be taken in the proceedings, unless and until the party against which such application is made consents to the jurisdiction of the Tribunal for the purposes of the case. Such consent may be given in a declaration or agreement and may be subject to qualifications included therein.

6. When proceedings are instituted by entities other than States Parties, the provisions of Part V of these Rules shall apply as appropriate.

## Article 45

1. When proceedings are brought before the Tribunal by the notification of a special agreement, in conformity with article 24, paragraph 1, of the Statute, the notification may be effected by the parties jointly or by any o or more of them. If the notification is not a joint one, a certified copy o it shall forthwith be communicated by the Registrar to the other party.

2. In each case the notification shall be accompanied by an original or certified copy of the special agreement. The notification shall also, in so far as this is not already apparent from the agreement, indicate the precise subject of the dispute and identify the parties to it.

## Article 46

1. All steps on behalf of the parties after proceedings have been instituted shall be taken by agents. This shall not apply in the circumstances contemplated by article 44, paragraph 5, of these Rules unless and until jurisdiction has been accepted by the party against which the application is made. Agents shall have an address for service at the seat o the Tribunal to which all communications concerning the case are to be sent. Communications addressed to the agents of the parties shall be considered as having been addressed to the parties themselves.

2. When proceedings are instituted by means of an application, the name of the agent for the applicant shall be stated. The respondent, upon receipt c the certified copy of the application, or as soon as possible thereafter, shall inform the Tribunal of the name of its agent.

3. When proceedings are brought by notification of a special agreement, the party making the notification shall state the name of its agent. Any other party to the special agreement, upon receiving from the Registrar a certified copy of such notification, or as soon as possible thereafter, shall inform the Tribunal of the name of its agent if it has not already done so.

## Article 47

1. The institution of proceedings by an entity which is not a State Party but which has accepted the jurisdiction of the Tribunal in an agreement referred to or by a declaration made in accordance with article 32, paragraph 2, or article 33 of these Rules shall be accompanied by a deposit of the declaration or agreement in question, unless the latter has previously been deposited with the Registrar.

2. An application by an international organization shall be accompanied by the relevant declarations and notifications under articles 4, 5 and 7 of annex IX to the Convention, or certified copies thereof, on the basis of which it claims competence on behalf of its member States which are States Parties, over the subject-matter of the dispute.

3. If any question of the validity or effect of such a declaration or notification arises, the Tribunal or Seabed Disputes Chamber, as the case may be, shall decide.

4. When in an application by an international organization any question arises as to whether the international organization has competence over the subject-matter of the dispute, the Tribunal or Chamber may, on the request of the respondent or proprio motu, request the international organization and its member States concerned to provide further information. If the question is not resolved on the basis of such information, further proceedings shall be suspended until the issue is resolved under the framework of the organization concerned and communicated accordingly to the Tribunal.

## Article 48

Whenever the interpretation or application of the Convention or an international agreement related to the purposes of the Convention to which States other than those concerned in the case are parties may be in question within the meaning of article 288, paragraph 2, of the Convention, or of articles 21 and 22, of the Statute, the Tribunal shall consider what directions shall be given to the Registrar in the matter to ensure that the interests of such State may be taken into account.

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### Subsection 2. Representation of parties

#### Article 49

1. The parties shall be represented by agents.

2. The parties may have the assistance of counsel or advocates before the Tribunal.

3. A State Party may at any time notify the Tribunal by an official communication as to who is authorized to act on its behalf for the purposes of proceedings under article 292 of the Convention.

#### Article 50

1. Agents representing a party to proceedings before the Tribunal as well as counsel and advocates appearing before the Tribunal shall, in the interests of the proper conduct of its proceedings, enjoy the privileges and immunities necessary for the independent exercise of their duties in accordance with the practice of international courts and tribunals and the relevant arrangements and agreements.

2. The Tribunal may direct the Registrar to take such measures as may be required for these purposes.

#### Article 51

1. Any agent, counsel or advocate whose conduct towards the Tribunal, a chamber, a Member or the Registrar is incompatible with the dignity of the Tribunal or who uses his rights for purposes other than those for which they were granted, may at any time be excluded from the proceedings by an order of the Tribunal or chamber; the person concerned shall first be informed by the President of the grounds therefor and shall be afforded an opportunity to defend himself by making a statement or furnishing an explanation he wishes to give. The order shall have effect immediately thereafter if the Tribunal maintains it.

2. Where a counsel or advocate is excluded from the proceedings, further proceedings shall be suspended for a period fixed by the President in order to allow the party concerned a reasonable opportunity to appoint another counsel or advocate.

3. Orders made under this article may be rescinded.

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## Subsection 3. Proceedings

### Article 52

1. The proceedings shall consist of two parts: written and oral.

2. The written proceedings shall consist of the communication to the Tribunal and to the parties of memorials, counter-memorials and, if necessary, replies and rejoinders, if the Tribunal so authorizes; also all papers and documents in support.

3. These communications shall be made through the Registrar, in the order and within the time fixed by the Tribunal.

4. A certified copy of every document produced by one party shall be communicated by the Registrar to the other party upon receipt.

5. The oral proceedings shall consist of the hearing by the Tribunal of witnesses, experts, agents, counsel and advocates.

### Article 53

In every case submitted to the Tribunal, the President shall ascertain the views of the parties with regard to questions of procedure. For this purpose he shall summon the agents of the parties to meet him as soon as possible after their appointment, and whenever necessary thereafter.

## Subsection 4. The written proceedings

### Article 54

1. In the light of the views obtained by the President under article 53 of these Rules, the Tribunal shall make the necessary orders to determine, *inter alia*, the number and the order of filing of the pleadings and the time-limits within which they must be filed.

2. In making an order under paragraph 1 of this article, any agreement between the parties which does not cause unjustified delay shall be taken into account.

3. The Tribunal may, at the request of the party concerned, extend any time-limit, or decide that any step taken after the expiration of the time-limit fixed therefor shall first be considered as valid, if it is satisfied that there is adequate justification for the request. In either case the other party shall be given an opportunity to state its views within a time-limit to be specified by the Tribunal.

4. If the Tribunal is not sitting, its powers under this article shall be exercised by the President, but without prejudice to any subsequent decision

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of the Tribunal. If the consultation referred to in article 53 reveals persistent disagreement between the parties as to the application of article 55, paragraph 2, and of article 56, paragraph 2, of these Rules, th Tribunal shall be convened to decide the matter.

### Article 55

1. The pleadings in a case begun by means of an application shall consist, in the following order, of: a memorial by the applicant; a counter-memoria by the respondent.

2. The Tribunal may authorize or direct that there shall be a reply by th applicant and a rejoinder by the respondent if the parties are so agreed, o if the Tribunal decides, proprio motu or at the request of one of the parti that these pleadings are necessary.

### Article 56

1. In a case begun by the notification of a special agreement, the number and order of the pleadings shall be governed by the provisions of the agreement, unless the Tribunal, after ascertaining the views of the parties decides otherwise.

2. If the special agreement contains no such provision, and if the partie have not subsequently agreed on the number and order of pleadings, they sha each file a memorial and counter-memorial, within the same time-limits. Th Tribunal shall not authorize the presentation of replies unless it finds th to be necessary.

### Article 57

The Tribunal may at any time, after consultation with the parties, direct that the proceedings in two or more cases be joined. It may also direct that the written or oral proceedings, including the calling of witnesses, be in common; or the Tribunal may, without effecting any formal joinder, direct common action in any of these respects.

### Article 58

Time-limits for the completion of steps in the proceedings may be fixe by assigning a specified period but shall always indicate definite dates. Such time-limits shall be as short as the character of the case or applicat permits.

## Article 59

1. A memorial shall contain a statement of the relevant facts, a statement of law, and the submissions.

2. A counter-memorial shall contain: an admission or denial of the facts stated in the memorial; any additional facts, if necessary; observations concerning the statement of law in the memorial; a statement of law in answer thereto; and the submissions.

3. The reply and rejoinder, whenever authorized by the Tribunal, shall not merely repeat the parties' contentions, but shall be directed to bringing out the issues that still divide them.

4. Every pleading shall set out the party's submissions at the relevant stage of the case, distinctly from the arguments presented, or shall confirm the submissions previously made.

## Article 60

1. There shall be annexed to the original of every pleading copies of any relevant documents adduced in support of the contentions contained in the pleading.

2. If only parts of a document are relevant, only such extracts as are necessary for the purpose of the pleading in question or for identifying the document need be annexed. A copy of the whole document shall be deposited in the Registry, unless it has been published and is readily available.

3. A list of all documents annexed to a pleading shall be furnished at the time the pleading is filed.

4. A certified copy of every document produced by one party shall be communicated by the Registrar to the other party upon receipt.

## Article 61

1. If the parties are agreed that the written proceedings shall be conducted wholly in one of the official languages of the Tribunal, 3/ the pleadings shall be submitted only in that language. If the parties are not so agreed, any pleading or any part of a pleading shall be submitted in one or other of the official languages.

2. In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use the language which it prefers; the judgment of the Tribunal shall be given in at least (...) 4/ of the official languages. In this case the Tribunal shall at the same time determine which of the texts shall be considered as authoritative.

3. The Tribunal shall, at the request of any party, authorize a language other than an official language to be used by that party.

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4. If a language other than an official language is used, a translation into one of the official languages, certified as accurate by the party submitting it, shall be attached to the original of each pleading.

5. When a document annexed to a pleading is not in one of the official languages of the Tribunal, it shall be accompanied by a translation into one of these languages certified by or on behalf of the party submitting it as accurate. The translation may be confined to part of an annex, or to extract therefrom, but in this case it must be accompanied by an explanatory note indicating what passages are translated. The Tribunal may however require a more extensive or a complete translation to be furnished.

## Article 62 5/

1. The original of every pleading shall be signed by the agent and filed i the Registry. It shall be accompanied by a certified copy of the pleading, documents annexed, and any translations, for communication to the other part in accordance with article 52, paragraph 4, of these Rules, and by the numbe of additional copies required by the Registry, but without prejudice to an increase in that number should the need arise later.

2. All pleadings shall be dated. When a pleading has to be filed by a certain date, it is the date of receipt of the pleading in the Registry whic will be regarded by the Tribunal as the material date.

3. If the Registrar arranges for the reproduction of a pleading at the request of a party, the text must be supplied in sufficient time to enable t pleading to be filed in the Registry before expiration of any time-limit whi may apply to it. The reproduction is done under the responsibility of the party in question.

4. The correction of a slip or error in any document which has been filed may be made at any time with the consent of the other party or by leave of t President. Any correction so effected shall be notified to the other party the same manner as the pleading to which it relates.

## Article 63

1. The Tribunal, or the President if the Tribunal is not sitting, may at any time decide, after ascertaining the views of the parties to the dispute, that copies of the pleadings and documents annexed shall be made available a State Party or to an entity other than a State Party which is entitled to appear before it in accordance with article 20, paragraph 2, of the Statute and which has asked to be furnished with such copies.

2. The Tribunal may, after ascertaining the views of the parties, decide that copies of the pleadings and documents annexed shall be made accessible the public on or after the opening of the oral proceedings.

## Subsection 5. Oral proceedings

### Article 64

1. Upon the closure of the written proceedings, the case is ready for hearing. The date for the opening of the oral proceedings shall be fixed by the Tribunal, which may also decide, if occasion should arise, that the opening or the continuance of the oral proceedings be postponed.

2. When fixing the date for, or postponing, the opening or continuance of the oral proceedings the Tribunal shall have regard to the priority required by articles 84 and 90 of these Rules and to any other special circumstances, including the urgency of a particular case and the views of the parties.

3. When the Tribunal is not sitting, its powers under this article shall be exercised by the President.

### Article 65

The Tribunal may, if it considers it desirable, decide pursuant to article 1, paragraph 3, of the Statute that all or part of the further proceedings in a case shall be held at a place other than the seat of the Tribunal. Before so deciding, it shall ascertain the views of the parties.

### Article 66

1. After the closure of the written proceedings, no further documents may be submitted to the Tribunal by either party except with the consent of the other party or as provided in paragraph 2 of this article. The party desiring to produce a new document shall file the original or a certified copy thereof, together with the number of copies required by the Registry, which shall be responsible for communicating it to the other party and shall inform the Tribunal. The other party shall be held to have given its consent if it does not lodge an objection to the production of the document within one month of receiving it.

2. In the event of objection, the Tribunal, after hearing the parties, may, if it considers the document necessary, authorize its production.

3. If a new document is produced under paragraph 1 or paragraph 2 of this article, the other party shall have an opportunity of commenting upon it and of submitting documents in support of its comments.

4. No reference may be made during the oral proceedings to the contents of any document which has not been produced in accordance with article 52 or this article, unless the document is part of a publication readily available.

5. The application of the provisions of this article shall not in itself constitute a ground for delaying the opening or the course of the oral proceedings.

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## Article 67

Without prejudice to the provisions of these Rules concerning the production of documents, each party shall communicate to the Registrar, in sufficient time before the opening of the oral proceedings, information regarding any evidence which it intends to produce or which it intends to request the Tribunal to obtain. This communication shall contain a list of the surnames, first names, nationalities, descriptions and places of residence of the witnesses and experts whom the party intends to call, with indications in general terms of the point or points to which their evidence will be directed. A copy of the communication shall also be furnished for transmission to the other party.

## Article 68

1. The Tribunal shall determine whether the parties should present their arguments before or after the production of the evidence; the parties shall, however, retain the right to comment on the evidence given.

2. The order in which the parties will be heard, the method of handling the evidence and of examining any witnesses and experts, and the number of counsel and advocates to be heard on behalf of each party, shall be settled by the Tribunal after the views of the parties have been ascertained in accordance with article 53 of these Rules.

## Article 69

The hearings shall, in accordance with article 26, paragraph 2, of the Statute, be public, unless the Tribunal shall decide otherwise, or unless the parties demand that the public be not admitted. Such a decision or demand may concern either the whole or part of the hearing, and may be made at any time.

## Article 70

1. The oral statements made on behalf of each party shall be as succinct as possible within the limits of what is requisite for the adequate presentation of that party's contentions at the hearing. Accordingly, they shall be directed to the issues that still divide the parties, and shall not go over the whole ground covered by the pleadings, or merely repeat the facts and arguments these contain.

2. At the conclusion of the last statement made by a party at the hearing, its agent, counsel or advocate, without recapitulation of the arguments, shall read that party's final submissions. A copy of the written text of these, signed by the agent, shall be communicated to the Tribunal and transmitted to the other party.

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### Article 71

1. The Tribunal may at any time prior to or during the hearing indicate any points or issues to which it would like the parties specially to address themselves, or on which it considers that there has been insufficient argument.

2. The Tribunal may, during the hearing, put questions to the agents, counsel and advocates, and may ask them for explanations.

3. Each Member or Member ad hoc has a similar right to put questions, but before exercising it he should make his intention known to the President, who is responsible for the control of the hearing in accordance with article 26, paragraph 1, of the Statute.

4. The agents, counsel and advocates may answer either immediately or within a time-limit fixed by the President.

### Article 72

1. The Tribunal may at any time call upon the parties to produce such evidence or to give such explanations as the Tribunal may consider to be necessary for the elucidation of any aspect of the matters in issue, or may itself seek other information for this purpose.

2. The Tribunal may, if necessary, arrange for the attendance of a witness or expert to give evidence in the proceedings.

### Article 73

1. The parties may call any witnesses or experts appearing on the list communicated to the Tribunal pursuant to article 67 of these Rules. If at any time during the hearing a party wishes to call a witness or expert whose name was not included in that list, it shall so inform the Tribunal and the other party, and shall supply the information required by article 67. The witness or expert may be called either if the other party makes no objection or if the Tribunal is satisfied that his evidence seems likely to prove relevant.

2. The Tribunal, or the President if the Tribunal is not sitting, shall, at the request of one of the parties or *proprio motu*, take the necessary steps for the examination of witnesses otherwise than before the Tribunal itself.

### Article 74

Unless on account of special circumstances the Tribunal decides on a different form of words,

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(a) every witness shall make the following solemn declaration before giving any evidence:

> "I solemnly declare upon my honour and conscience that I will speak the truth, the whole truth and nothing but the truth";

(b) every expert shall make the following solemn declaration before making any statement:

> "I solemnly declare upon my honour and conscience that I will speak the truth, the whole truth and nothing but the truth, and that my statement will be in accordance with my sincere belief."

### Article 75

Witnesses and experts shall, under the control of the President, be examined by the agents, counsel or advocates of the parties. Questions may be put to them by the President and by the Members. Before testifying, witnesses other than experts shall remain out of court.

### Article 76

The Tribunal may at any time decide, either proprio motu or at the request of a party, to exercise its functions with regard to the obtaining of evidence at a place or locality to which the case relates, subject to such conditions as the Tribunal may decide upon after ascertaining the views of the parties. The necessary arrangements shall be made in accordance with article 36 of these Rules.

### Article 77

1. If the Tribunal considers it necessary to arrange for an inquiry or an expert opinion, it shall, after hearing the parties, issue an order to this effect, defining the subject of the inquiry or expert opinion, stating the number and mode of appointment of the persons to hold the inquiry or of the experts, and laying down the procedure to be followed. Where appropriate, the Tribunal shall require persons appointed to carry out an inquiry, or to give an expert opinion, to make a solemn declaration.

2. Every report or record of an inquiry and every expert opinion shall be communicated to the parties, which shall be given the opportunity of commenting upon it.

### Article 78

Witnesses and experts who attend at the instance of the Tribunal under article 72, paragraph 2, and persons appointed by the Tribunal under article 77, paragraph 1, of these Rules, to carry out an inquiry or to give an expert

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opinion, shall, where the Tribunal considers it appropriate, be paid out of the funds of the Tribunal.

## Article 79

1. The Tribunal may, at any time prior to the closure of the oral proceedings, either *proprio motu* or at the request of one of the parties communicated as provided in article 67 of these Rules, request an appropriate international organization referred to in paragraph 4 of this article to furnish information relevant to a case before it. The Tribunal, after consulting the chief administrative officer of the organization concerned, shall decide whether such information shall be presented to it orally or in writing, and the time-limits for its presentation.

2. When such an international organization sees fit to furnish, on its own initiative, information relevant to a case before the Tribunal, it shall do so in the form of a memorial to be filed in the Registry before the closure of the written proceedings. The Tribunal shall retain the right to require such information to be supplemented, either orally or in writing, in the form of answers to any questions which it may see fit to formulate, and also to authorize the parties to comment, either orally or in writing, on the information thus furnished.

3. Whenever the construction of the constituent instrument of such an international organization or of an international convention adopted thereunder is in question in a case before the Tribunal, the Registrar shall, on the instructions of the Tribunal, or of the President if the Tribunal is not sitting, so notify the international organization concerned and shall communicate to it copies of all the written proceedings. The Tribunal, or the President if the Tribunal is not sitting, may, as from the date on which the Registrar has communicated copies of the written proceedings and after consulting the chief administrative officer of the international organization concerned, fix a time-limit within which the organization may submit to the Tribunal its observations in writing. These observations shall be communicated to the parties and may be discussed by them and by the representative of the said organization during the oral proceedings.

4. In the foregoing paragraphs, the term "international organization" denotes an international organization constituted by States, with the exception of those organizations referred to in article 1 (4) of these Rules.

## Article 80

1. In the absence of any decision to the contrary by the Tribunal, all speeches and statements made and evidence given at the hearing in one of the official languages of the Tribunal shall be interpreted into the other official languages. If they are made or given in any other language, they shall be interpreted into the official languages of the Tribunal.

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2. Whenever, in accordance with article 61, paragraph 4, of these Rules, a language other than an official language is used, the necessary arrangements for interpretation into one of the official languages shall be made by the party concerned; however, the Registrar shall make arrangements for the verification of the interpretation provided by a party of evidence given on the party's behalf. In the case of witnesses or experts who appear at the instance of the Tribunal, arrangements for interpretation shall be made by the Registrar.

3. A party on behalf of which speeches or statements are to be made, or evidence given, in a language which is not one of the official languages of the Tribunal, shall so notify the Registrar in sufficient time for him to make the necessary arrangements, including verification.

4. Before first interpreting in the case, interpreters provided by a party shall make the following solemn declaration:

> "I solemnly declare upon my honour and conscience that my interpretation will be faithful and complete."

## Article 81

1. Minutes shall be made at each hearing and signed by the Registrar and the President. For this purpose, a verbatim record shall be made by the Registrar of every hearing, in the official language of the Tribunal which has been used. When the language used is not one of the official languages of the Tribunal, the verbatim record shall be prepared in one of the Tribunal's official languages.

2. When speeches or statements are made in a language which is not one of the official languages, the party on behalf of which they are made shall supply to the Registry in advance a text thereof in one of the official languages, and this text shall constitute the relevant part of the verbatim record.

3. The transcript of the verbatim record shall be preceded by the names of the Members and Member ad hoc present, and those of the agents, counsel and advocates of the parties.

4. Copies of the transcript shall be circulated to the Members and Members ad hoc sitting in the case, and to the parties. The latter may, under the supervision of the Tribunal, correct the transcripts of speeches and statements made on their behalf, but in no case may such corrections affect the sense and bearing thereof. The Members and Members ad hoc may likewise make corrections in the transcript of anything they may have said. One certified true copy of the eventual corrected transcript, signed by the President and the Registrar, shall constitute the authentic minutes of the sitting.

5. Witnesses and experts shall be shown that part of the transcript which relates to the evidence given, or the statements made, by them, and may correct it in like manner as the parties.

6. The minutes of public hearings shall be printed and published by the Tribunal.

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## Article 82

Any written reply by a party to a question put under article 71, or any evidence or explanation supplied by a party under article 72 of these Rules, received by the Tribunal after the closure of the oral proceedings, shall be communicated to the other party, which shall be given the opportunity of commenting upon it. If necessary the oral proceedings may be reopened for that purpose.

## Section D. Incidental proceedings

### Subsection 1. Provisional measures

## Article 83

1. A written request for the prescription of provisional measures by the Tribunal or the Seabed Disputes Chamber may be made by a party at any time in accordance with paragraph 1 or 5 of article 290 of the Convention.

2. The request shall specify the reasons therefor, the possible consequences if it is not granted, and the measures requested. A certified copy shall forthwith be transmitted by the Registrar to the other party.

3. When a request for provisional measures has been made, the Tribunal may indicate measures that are in whole or in part other than those requested, or that ought to be taken or complied with by the party which has itself made the request.

## Article 84

1. A request for the prescription of provisional measures shall have priority over all other cases. This shall not affect applications under article 292 of the Convention which shall be dealt with without delay.

2. If the Tribunal is not in session or if a sufficient number of its Members is not available to constitute a quorum, the Chamber of Summary Procedure formed under article 15, paragraph 3, of the Statute and article 17 of these Rules shall be convened forthwith for the purpose of proceeding to a decision on the request as a matter of urgency.

3. The Tribunal, or the President if the Tribunal is not sitting, shall fix the earliest possible date for a hearing which will afford the parties an opportunity of being represented at it. The Tribunal, or the Chamber of Summary Procedure as the case may be, shall receive and take into account any observations that may be presented to it by a party before the closure of the oral proceedings.

4. Pending the meeting of the Tribunal or Chamber, the President may call upon the parties to act in such a way as will enable any order the Tribunal or

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Chamber may make on the request for provisional measures to have its appropriate effects.

## Article 85

The rejection of a request for the prescription of provisional measures shall not prevent the party which made it from making a fresh request in the same case based on new facts.

## Article 86

Any application by a party in accordance with article 290, paragraph 3, of the Convention requesting the modification or revocation of provisional measures shall specify the change in circumstances which justified them.

## Article 87

Any measures prescribed by the Tribunal under article 290 of the Convention shall forthwith be notified in accordance with article 290, paragraph 4, of the Convention.

## Article 88

The Tribunal may request information from the parties on any matter connected with the implementation of any provisional measures it has prescribed.

### Subsection 2. Prompt release of vessels and crews

## Article 89

1. Any application for the release of a vessel or its crew from detention may be made in accordance with article 292 of the Convention by the flag State of the vessel or on its behalf by a representative authorized under article 49, paragraph 3, of these Rules.

2. An application on behalf of a flag State shall be accompanied by an authorization under article 49, paragraph 3, of these Rules, if such authorization has not been previously submitted to the Tribunal.

3. The application and the authorization shall be duly authenticated in the manner provided in article 44, paragraph 3, of these Rules.

4. The application shall specify the time and location where the detention commenced, and contain a succinct statement of the facts and the basis and reasons for requesting release. The statement of facts shall contain relevant information concerning the vessel and crew, including the name, flag, and the port or place of registration of the vessel and its tonnage, cargo capacity,

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data relevant to the determination of its value, the name and address of the vessel owner and operator and particulars regarding its crew. It shall also specify the amount, nature and terms of the bond or other financial security that may have been imposed by the detaining State and the extent to which such requirements have been complied with. The statement may include any further information the applicant considers relevant to the determination of the amount of a reasonable bond or other financial security and to any other issue in these proceedings.

5. A certified copy of the application shall forthwith be transmitted by the Registrar to the detaining State which may submit a statement in response containing such information as the detaining State considers relevant, including information relating to the circumstances in which the vessel is detained and, if relevant, the extent of damage claimed to have been caused by the vessel.

6. The Tribunal may, at any time, require further information to be provided in a supplementary statement.

## Article 90

1. The Tribunal shall give priority to applications for release of vessels and/or crews and to requests for provisional measures over all other cases. When the Tribunal is seized simultaneously of an application for release of vessels and/or crews and of a request for provisional measures, it shall take the necessary decisions to ensure that both the application and the request shall be settled without delay.

2. The Tribunal, or the President, if the Tribunal is not sitting, shall fix the earliest practicable date, but not exceeding ten days, from the date of receipt of the application, for a hearing which will afford the parties an opportunity of being represented and submitting their oral or written observations.

3. If the applicant has so requested, and if the Tribunal is not in session, or a sufficient number of its Members is not available to constitute a quorum, the hearing and determination shall be made by the Chamber of Summary Procedure constituted under article 15, paragraph 3, of the Statute and article 17 of these Rules, unless, within one week of the receipt of notice of the application, but in any event not later than ten days following receipt of the said notice, the detaining State notifies the Tribunal that the proceedings should be before the Tribunal.

## Article 91

1. The Tribunal or Chamber shall forthwith make a determination as to the release of the vessel and/or crew upon the posting of a reasonable bond or other financial security, and as to the nature, terms and amount thereof. The Tribunal or Chamber may determine that the nature, terms and amount of any bond or other financial security that may have been imposed by the detaining State are reasonable. The decision shall order the detaining State to release the

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vessel and its crew upon the posting of such a reasonable bond or other financial security. At the request of the flag State, the Tribunal or Chamber may consider as sufficient financial security a guarantee which is enforceable in the detaining State as well as under international commercial practice, or a guarantee by the flag State accepted in practice between the flag State and the detaining State.

2. The order of the Tribunal or Chamber concerning the release of the vessel and its crew shall indicate that the bond or other financial security shall be posted with the Tribunal, unless a bond or security consistent with the nature, terms and amount determined by the Tribunal or the Chamber has been posted earlier with the detaining State, or at the request of the flag State the Tribunal or Chamber determines that it should be posted with the detaining State. In the latter case, the Tribunal shall first ascertain the views of the detaining State with which the bond or other financial security shall be posted.

3. The Registrar shall immediately communicate to the parties the determination and order of the Tribunal or Chamber.

4. Upon the posting of the bond or other financial security with the Tribunal or with the detaining State, as determined by the Tribunal or Chamber, the Registrar shall promptly notify the parties and communicate the order of the Tribunal or Chamber for the release of the vessel and/or its crew.

## Article 92

Upon receipt of notification by the Tribunal from the detaining State of the release of the vessel and its crew and, upon confirmation thereof, the Tribunal shall terminate its proceedings.

## Article 93

1. The Registrar shall endorse and/or transmit the bond or other financial security posted with the Tribunal or as directed by it, to the detaining State upon communication of the final judgment, award or decision of the competent domestic forum or authority against the vessel, its owner or its crew to the extent that it is required to satisfy such judgment or award.

2. The bond or other financial security, to the extent that it is not required to satisfy the judgement or award, shall be endorsed and/or transmitted in favour of the flag State or its authorized representative.

3. The Tribunal or Chamber shall, at the request of the flag State or the detaining State, as the case may be, take the necessary determinations for the bond or security to be:

(a) endorsed or released by the same means of payment in which the bond or other financial security was posted with the detaining State to the extent that it is not required to satisfy the final judgment or award of the appropriate domestic forum; or

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(b) supplemented to the extent that it is required to satisfy the final judgment or award of the appropriate domestic forum.

### Subsection 3. Preliminary proceedings

### Article 94

1. When an application is made in respect of a dispute referred to in article 297 of the Convention, the Tribunal shall determine at the request of a party, or may determine *proprio motu*, in accordance with article 294 of the Convention, whether the claim constitutes an abuse of legal process or whether *prima facie* it is well founded.

2. Upon receipt by the Registry of such an application, the Tribunal, or the President if the Tribunal is not sitting, shall fix a time-limit within which the other party or parties may request a determination in accordance with paragraph 1 of article 294 of the Convention. The Registrar shall immediately notify the other party or parties of the application and of such time-limit and shall provisionally include the case on the general list, subject to its removal under paragraph 7.

3. Any party so notified may, in requesting such a determination, present a written statement of its observations and submissions; copies of documents in support of the statement shall be attached and evidence which it is proposed to produce shall be mentioned.

4. Unless otherwise decided on by the Tribunal, the further preliminary proceedings shall be oral.

5. The statements and evidence presented at the hearing contemplated by paragraph 4 shall be confined to those matters that are relevant to the determination whether that claim is *prima facie* well founded.

6. In order to enable the Tribunal to make a determination in accordance with article 294 of the Convention, it may, whenever necessary, request the parties to argue such questions of law and fact, and to adduce such evidence, which the Tribunal considers as bearing on the issue.

7. After hearing the parties, the Tribunal shall make its determination in the form of an order. In any case where the Tribunal determines that the claim constitutes an abuse of legal process or is *prima facie* unfounded, it shall direct the Registrar to remove the case from the general list and it shall take no further action in the case.

8. In any case where the Tribunal determines that the claim is, *prima facie*, well founded it shall fix time-limits for the further proceedings, without prejudice to the right of any parties to make preliminary objections in accordance with subsection 4 of this section of the Rules.

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### Subsection 4. Preliminary objections

### Article 95

1. Any objection by the respondent to the jurisdiction of the Tribunal or to the admissibility of the application, or other objection the decision upon which is requested before any further proceedings on the merits, shall be made in writing within the time-limit fixed for the delivery of the counter-memorial. Any such objection made by a party other than the respondent shall be filed within the time-limit fixed for the delivery of that party's first pleading.

2. The preliminary objection shall set out the facts and the law on which the objection is based, the submissions and a list of the documents in support; it shall mention any evidence which the party may desire to produce. Copies of the supporting documents shall be attached.

3. Upon receipt by the Registry of a preliminary objection, the proceedings on the merits shall be suspended and the Tribunal, or the President if the Tribunal is not sitting, shall fix the time-limit within which the other party may present a written statement of its observations and submissions; copies of documents in support shall be attached and evidence which it is proposed to produce shall be mentioned.

4. Unless otherwise decided by the Tribunal, the further proceedings relating to the preliminary objection shall be oral.

5. The statements of fact and law in the pleadings referred to in paragraphs 2 and 3, and the statements and evidence presented at the hearings contemplated by paragraph 4, shall be confined to those matters that are relevant to the objection.

6. In order to enable the Tribunal to determine its jurisdiction at this preliminary stage of the proceedings, the Tribunal, whenever necessary, may request the parties to argue all questions of law and fact, and to adduce all evidence, which bear on the issue.

7. After hearing the parties, the Tribunal shall give its decision in the form of a judgment, by which it shall either uphold the objection, reject it or declare that the objection does not possess, in the circumstances of the case, an exclusively preliminary character. If the Tribunal rejects the objection or declares that it does not possess an exclusively preliminary character, it shall fix time-limits for the further proceedings.

8. Any agreement between the parties that an objection submitted under paragraph 1 be heard and determined within the framework of the merits shall be given effect by the Tribunal.

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### Subsection 5. Counter-claims

### Article 96

1. A counter-claim may be presented provided that it is directly connected with the subject-matter of the claim of the other party and that it comes within the jurisdiction of the Tribunal.

2. A counter-claim shall be made in the counter-memorial of the party presenting it, and shall appear as part of the submissions of that party.

3. In the event of doubt as to the connection between the question presented by way of counter-claim and the subject-matter of the claim of the other party the Tribunal shall, after hearing the parties, decide whether or not the question thus presented shall be joined to the original proceedings.

### Subsection 6. Intervention

### Article 97

1. An application for permission to intervene under the terms of article 31 of the Statute, signed in the manner provided for in article 44, paragraph 3, of these Rules, shall be filed as soon as possible, and not later than the closure of the written proceedings. In exceptional circumstances, an application submitted at a later stage may however be admitted.

2. The application shall state the name of an agent. It shall specify the case to which it relates, and shall set out:

(a) the interest of a legal nature which the State Party applying to intervene considers may be affected by the decision in that case;

(b) the precise object of the intervention;

(c) any basis of jurisdiction which is claimed to exist as between the State Party applying to intervene and the parties to the case.

3. The application shall contain a list of the documents in support, copies of which documents shall be attached.

### Article 98

1. A State Party or an entity other than a State Party referred to in article 291, paragraph 2, of the Convention and article 20, paragraph 2, of the Statute which desires to avail itself of the right of intervention conferred upon it by article 32 of the Statute shall file a declaration to that effect. A declaration by a State Party shall be signed in the manner provided for in article 44, paragraph 3, the declaration by an entity other than a State Party shall be signed in the manner provided for in article 44, paragraph 5, and shall be in compliance with part V, article 127, of these Rules. Such declarations

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shall be filed as soon as possible, and not later than the date fixed for the opening of the oral proceedings. In exceptional circumstances a declaration submitted at a later stage may however be admitted.

2. The declaration shall state the name and address of an agent. It shall specify the case and the international agreement to which it relates and shall contain:

(a) particulars of the basis on which the declarant considers itself a party to the international agreement;

(b) identification of the particular provisions of the international agreement the interpretation or application of which it considers to be in question;

(c) a statement of the interpretation or application of those provisions for which it contends;

(d) a list of the documents in support, copies of which documents shall be attached.

3. Such a declaration may be filed by a State Party or entity other than a State Party that considers itself a party to the international agreement the interpretation or application of which is in question but has not received the notification referred to in article 32, paragraph 2, of the Statute.

## Article 99

1. Certified copies of the application for permission to intervene under article 31 of the Statute, or of the declaration of intervention under article 32 of the Statute, shall be communicated forthwith to the parties to the case, which shall be invited to furnish their written observations within a time-limit to be fixed by the Tribunal or by the President if the Tribunal is not sitting.

2. The Registrar shall also transmit copies to: (a) States Parties; (b) the Secretary-General of the United Nations; (c) the Secretary-General of the International Seabed Authority when it relates to matters affecting the exploration and exploitation of the Area; (d) any other parties which have to be notified under article 32, paragraph 2, of the Statute.

## Article 100

1. The Tribunal shall decide whether an application for permission to intervene under article 31 of the Statute should be granted, and whether an intervention under article 32 of the Statute is admissible, as a matter of priority in the context of the case.

2. If, within the time-limit fixed under article 99 of these Rules, an objection is filed to an application for permission to intervene, or to the

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admissibility of a declaration of intervention, the Tribunal shall hear the State or entity other than a State seeking to intervene and the parties before deciding.

## Article 101

1. If an application for permission to intervene under article 31 of the Statute is granted, the intervening State Party shall be supplied with copies of the pleadings and documents annexed and shall be entitled to submit a written statement within a time-limit to be fixed by the Tribunal. A further time-limit shall be fixed within which the parties may, if they so desire, furnish their written observations on that statement prior to the oral proceedings. If the Tribunal is not sitting, these time-limits shall be fixed by the President.

2. The time-limits fixed according to the preceding paragraph shall, so far as possible, coincide with those already fixed for the pleadings in the case.

3. The intervening State Party shall be entitled, in the course of the oral proceedings, to submit its observations with respect to the subject-matter of the intervention.

## Article 102

1. If an intervention under article 32 of the Statute is admitted, the intervening State Party or entity other than a State Party shall be furnished with copies of the pleadings and documents annexed, and shall be entitled, within a time-limit to be fixed by the Tribunal, or by the President if the Tribunal is not sitting, to submit its written observations on the subject-matter of the intervention.

2. These observations shall be communicated to the parties and to any other State Party or entity other than a State Party admitted to intervene. The intervening party shall be entitled, in the course of the oral proceedings, to submit its observations with respect to the subject-matter of the intervention.

## Subsection 7. Special reference to the Tribunal

## Article 103

1. When, in accordance with the Convention or an international agreement in force related to the purposes of the Convention conferring jurisdiction on the Tribunal, a dispute is submitted to the Tribunal by means of an application or notification of a special agreement concerning a matter which has been the subject of proceedings before another international court or tribunal or other international body, the provisions of the Convention, the Statute and these Rules which govern disputes shall apply.

2. The application or notification of special agreement instituting proceedings shall identify the decision or other act of the court or tribunal or

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other international body concerned and a copy thereof shall be annexed; where the dispute is submitted in accordance with an international agreement related to the purposes of the Convention, a certified copy of such agreement conferring jurisdiction on the Tribunal shall be annexed; the application shall contain a precise statement of the questions raised in regard to the decision or act, which constitute the subject of the dispute referred to the Tribunal.

### Subsection 8. Discontinuance

### Article 104

1. If at any time before the final judgment on the merits has been delivered the parties, either jointly or separately, notify the Tribunal in writing that they have agreed to discontinue the proceedings, the Tribunal shall make an order recording the discontinuance and directing the Registrar to remove the case from the general list.

2. If the parties have agreed to discontinue the proceedings in consequence of having reached a settlement of the dispute and if they so desire, the Tribunal shall record this fact in the order for the removal of the case from the list, or indicate in, or annex to, the order, the terms of the settlement.

3. If the Tribunal is not sitting, its powers under this article may be exercised by the President.

### Article 105

1. If in the course of proceedings instituted by means of an application, the applicant informs the Tribunal in writing that it is not going on with the proceedings, and if, at the date on which this communication is received by the Registry, the respondent has not yet taken any step in the proceedings, the Tribunal shall make an order officially recording the discontinuance of the proceedings and directing the removal of the case from the general list. A copy of this order shall be sent by the Registrar to the respondent.

2. If, at the time when the notice of discontinuance is received, the respondent has already taken some step in the proceedings, the Tribunal shall fix a time-limit within which the respondent may state whether it opposes the discontinuance of the proceedings. If no objection is made to the discontinuance before the expiration of the time-limit, acquiescence will be presumed and the Tribunal shall make an order officially recording the discontinuance of the proceedings and directing the Registrar to remove the case from the general list. If objection is made, the proceedings shall continue.

3. If the Tribunal is not sitting, its powers under this article may be exercised by the President.

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## Section E. Proceedings before the Special Chambers

### Article 106

Proceedings before the chambers mentioned in article 15 of the Statute shall, subject to the provisions of the Convention, the Statute and of these Rules relating specifically to the chambers, be governed by the provisions of parts I to III and sections A to D of part IV of these Rules applicable in disputes before the Tribunal.

### Article 107

1. When it is desired that a case should be dealt with by one of the chambers which has been formed in pursuance of article 15, paragraphs 1 or 3, of the Statute, a request to this effect shall either be made in the document instituting the proceedings or accompanying it. Effect will be given to the request if the parties are in agreement.

2. Upon receipt by the Registry of this request, the President of the Tribunal shall communicate it to the Members of the chamber concerned. He shall, pursuant to article 17, paragraph 4, of the Statute, in consultation with the parties, request specified Members of the Tribunal forming the chamber, as many as necessary, to give place to the Members of the Tribunal of the nationality of the parties concerned, and, failing such, or if they are unable to be present, to the Members specially chosen by the parties.

3. A request that a case be brought before a chamber to be formed under article 15, paragraph 2, of the Statute shall be contained in the document instituting the proceedings or accompanying it. Effect will be given to the request if the parties are in agreement and the composition of the chamber shall be determined by the Tribunal with the approval of the parties.

4. The President of the Tribunal shall convene the chamber at the earliest date compatible with the requirements of the procedure.

### Article 108

An application for the prescription of provisional measures may be dealt with by the Chamber of Summary Procedure formed under article 15, paragraph 3, of the Statute at the request of any party to the dispute, if the Tribunal is not in session or a sufficient number of Members is not available to constitute a quorum.

### Article 109

1. Written proceedings in a case before a chamber shall consist of a single pleading by each side. In proceedings begun by means of an application, the pleadings shall be delivered within successive time-limits. In proceedings begun by the notification of a special agreement, the pleadings shall be

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delivered within the same time-limits, unless the parties have agreed on successive delivery of their pleadings. The time-limits referred to in this paragraph shall be fixed by the Tribunal, or by the President if the Tribunal is not sitting, in consultation with the chamber concerned if it is already constituted.

2. The chamber may authorize or direct that further pleadings be filed if the parties are so agreed, or if the chamber decides, proprio motu or at the request of one of the parties, that such pleadings are necessary.

3. Oral proceedings shall take place unless the parties agree to dispense with them, and the chamber consents. Even when no oral proceedings take place, the chamber may call upon the parties to supply information or furnish explanations orally.

## Section F. Judgments, interpretation and revision

### Subsection 1. Judgments

### Article 110

1. When the Tribunal or a chamber has completed its deliberations and adopted its judgment, the parties shall be given reasonable notice of the date on which it will be read.

2. The judgment shall be read at a public sitting of the Tribunal or chamber, as the case may be, and shall become binding on the parties on the day of the reading. Where the judgment is to be rendered as a matter of urgency, or if the Tribunal or a chamber otherwise considers expedient, the President or Acting President may read the judgment at a public sitting at which all Members and Members ad hoc constituting the bench for the case may not be present.

### Article 111

1. The judgment, which shall state whether it is given by the Tribunal or a chamber, shall contain:

(a) the date on which it is read;

(b) the names of the Members and Members ad hoc participating in it;

(c) the names of the parties;

(d) the names of the agents, counsel and advocates of the parties;

(e) a summary of the proceedings;

(f) the submissions of the parties;

(g) a statement of the facts;

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(h) the reasons of fact and law on which it is based;

(i) the operative provisions of the judgment;

(j) the decision, if any, in regard to costs;

(k) the number and names of the Members and Members ad hoc of the Tribunal constituting the majority, and those constituting the minority;

(l) a statement as to the text of the judgment which is authoritative.

2. Any Member or Member ad hoc of the Tribunal or chamber is entitled to attach his separate opinion to the judgment whether or not he dissents from the majority in whole or in part; a Member or Member ad hoc of the Tribunal or chamber who wishes to record his concurrence or dissent without stating his reasons may do so in the form of a declaration. The same shall also apply to orders made by the Tribunal or chamber.

3. One copy of the judgment duly signed by the President and by the Registrar and sealed, shall be placed in the archives of the Tribunal and another shall be transmitted to each of the parties. Copies shall be transmitted by the Registrar to: (a) States Parties; (b) the Secretary-General of the United Nations; (c) the Secretary-General of the International Seabed Authority; (d) in a case submitted under an agreement pursuant to article 20, paragraph 2, article 21 or article 22 of the Statute, the parties to such agreement.

### Article 112

When by reason of an agreement reached between the parties, the written and oral proceedings have been conducted in one of the Tribunal's official languages; pursuant to article 61 of these Rules, the judgment is to be delivered in that language and the text of the judgment in that language shall be the authoritative text.

### Article 113

If the Tribunal or a chamber has decided in a judgment or order that under article 34 of the Statute all or part of a party's cost shall be paid by the other party, it shall, if necessary, make an order determining the form and amount of payment to be made.

## Subsection 2. Requests for the interpretation or revision of a judgment

### Article 114

1. In the event of a dispute as to the meaning or scope of a judgment rendered by the Tribunal, any party may, in accordance with article 33 of the Statute,

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make a request for its interpretation, whether the original proceedings were begun by an application or by the notification of a special agreement.

2. A request for the interpretation of a judgment may be made either by an application or by the notification of a special agreement to that effect between the parties; the precise point or points in dispute as to the meaning or scope of the decision shall be indicated.

3. If the request for interpretation is made by an application, the requesting party's contentions shall be set out therein, and the other party shall be notified and shall be entitled to file written observations thereon within a time-limit fixed by the Tribunal, or by the President if the Tribunal is not sitting.

4. Whether the request is made by an application or by notification of a special agreement, the Tribunal may, if necessary, afford the parties the opportunity of furnishing further written or oral explanations.

### Article 115

1. A request for revision of a judgment may be made only when it is based upon the discovery of some fact of such a natura as to be a decisive factor, which fact was, when the judgment was given, unknown to the Tribunal and also to the party claiming revision, always provided that such ignorance was not due to negligence.

2. A request for the revision of a judgment shall be made by an application containing the particulars necessary to show that the conditions specified in paragraphs 1, 3 and 4 of this article are fulfilled. Any document in support of the application shall be annexed to it.

3. The application for revision must be made at the latest within six months of the discovery of the new fact.

4. No application for revision may be made after the lapse of ten years from the date of the judgment.

5. The other party shall be entitled to file written observations on the admissibility of the application within a time-limit fixed by the Tribunal, or by the President if the Tribunal is not sitting. These observations shall be communicated to the party making the application. 6/

### Article 116

1. The Tribunal, before giving its decision on the admissibility of the application for revision, shall afford the parties a further opportunity of presenting their views thereon.

2. The proceedings for revision shall be opened by a decision of the Tribunal in the form of a judgment expressly recording the existence of the new fact,

recognizing that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.

3. When appropriate, the Tribunal may require previous compliance with the terms of the judgment in respect of which the application is made before it admits proceedings in revision. In such case it shall make an order that the admission of proceedings in revision is conditional on previous compliance with such decision.

4. If the Tribunal finds that the application is admissible it shall fix time-limits for such further proceedings on the merits of the application as, after ascertaining the views of the parties, it considers necessary.

## Article 117

1. If the judgment to be revised or to be interpreted was given by the Tribunal, the request for its revision or interpretation shall be dealt with by the Tribunal. If the judgment was given by a chamber, the request for its revision or interpretation shall be dealt with by that chamber, or if that is not possible, then a chamber composed in a similar manner.

2. If the composition of the chamber requires the approval of the parties which cannot be obtained within time-limits fixed by the Tribunal, the request shall be dealt with by a chamber constituted in a similar manner by the Tribunal.

3. The decision of the Tribunal, or of the chamber, on a request for interpretation or revision of a judgment shall itself be given in the form of a judgment.

## Section G. Modifications proposed by the parties

## Article 118

The parties to a case may jointly propose particular modifications or additions to the Rules contained in the present part (with the exception of articles 109 to 113 inclusive), which may be applied by the Tribunal or by a chamber if the Tribunal or the chamber considers them appropriate in the circumstances of the case.

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# PART V

# THE SEABED DISPUTES CHAMBER

## Section A. Members, Members ad hoc and experts of the Chamber

### Subsection 1. The Members and Members ad hoc of the Chamber

### Article 119

1. The eleven Members of the Seabed Disputes Chamber are selected by secret ballot from among the Members of the Tribunal in accordance with article 35 of the Statute.

2. In the selection of Members of the Chamber, the Tribunal shall, in accordance with article 35, paragraph 2, of the Statute, assure the representation of the principal legal systems of the world and equitable geographical distribution; it shall also bear in mind any recommendations of a general nature adopted by the Assembly of the Authority in that regard.

3. For the purposes of a particular case, the Chamber may include upon the bench one or more persons chosen under article 17 of the Statute to sit as Members ad hoc.

4. In these Rules, the term "Member ad hoc of the Chamber" denotes any person chosen under article 17 of the Statute for the purposes of a particular case before the Chamber.

### Article 120

1. The term of office of Members of the Chamber selected triennially shall begin to run from the (... day and month of first selection ...) 7/ in the year in which the vacancies to which they are selected occur. They shall continue to discharge their duties until their places have been filled.

2. The term of office of a Member of the Chamber selected to replace a Member whose term of office has not expired shall begin to run from the date of the selection for the remainder of the predecessor's term.

### Article 121

1. The provisions of article 4, paragraphs 1, 3 and 4 of these Rules shall apply as between Members of the Chamber.

2. The Members of the Chamber shall, except as provided in paragraphs 3 and 4 of this article, take precedence according to the date on which their terms of office respectively began, as provided for by article 120 of these Rules.

3. In the Seabed Disputes Chamber, the President of the Chamber, while holding that office, shall take precedence before all other Members of the Chamber.

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4. In the Seabed Disputes Chamber, the Member of the Chamber who, in accordance with article 4, paragraphs 1 and 3, of these Rules, and paragraph 2 of this article, takes precedence next after the President of the Chamber, is designated the "senior Member of the Chamber". If that Member is unable to act, the Member of the Chamber who is next after him in precedence and able to act is considered as senior Member.

### Subsection 2. Members ad hoc

### Article 122

1. The provisions of articles 8 and 9 of these Rules shall apply *mutatis mutandis* to the Members ad hoc of the Seabed Disputes Chamber.

2. The solemn declaration to be made by every Member ad hoc in the chamber shall be as set out in article 5, paragraph 1, of these Rules.

### Subsection 3. Experts

### Article 123

1. The powers with respect to the appointment of experts in accordance with article 289 of the Convention shall also belong to the Chamber and its ad hoc chambers and to the presidents thereof and may be exercised in the same manner as provided in article 10 of these Rules.

2. Before entering upon their duties, experts of the Chamber or its ad hoc chambers shall make the declaration undertaking the responsibilities referred to in article 10, paragraph 6.

## Section B. The presidency of the Seabed Disputes Chamber

### Article 124

The provisions of articles 11 to 15 of these Rules shall apply, *mutatis mutandis*, to the President or the presidency, as the case may be, of the Seabed Disputes Chamber.

## Section C. Proceedings before the Seabed Disputes Chamber

### Subsection 1. Proceedings

### Article 125

Proceedings before the Seabed Disputes Chamber referred to in article 14 of the Statute shall, subject to the provisions of the Convention, the Statute and of these Rules relating specifically to the chambers, be governed by the

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provisions of parts I to III and sections A to D of part IV of these Rules applicable in disputes before the Tribunal.

## Article 126

1. Section C of part IV of these Rules shall apply to the Chamber with respect to disputes between States Parties.

2. Proceedings where a party to the dispute is an entity other than a State Party, or parties to the dispute are such entities, shall be governed by the provisions of this section.

## Article 127

1. An application under article 20, paragraph 2, of the Statute submitted by an entity which is not a State Party shall state:

(a) the applicant, including the name and permanent residence or registered office address when the applicant is a natural or juridical person;

(b) the party respondent, including the name and address when the respondent is a natural or juridical person;

(c) the sponsoring State, in any case where the applicant is a natural or juridical person or a State enterprise;

(d) the sponsoring State of the respondent, in any case where the party against which the claim is brought is a natural or juridical person or State enterprise;

(e) the subject of the dispute and the legal grounds upon which jurisdiction is said to be based; the precise nature of the claim, together with a succinct statement of the facts and grounds on which the claim is based;

(f) the decision or measure sought by the applicant;

(g) the nature of any evidence upon which the application is founded.

2. For the purpose of the proceedings, the applicant shall state an address for service in the place where the Tribunal has its seat. The application shall also give the name of a person who is authorized and has expressed willingness to accept service.

3. The party may have the assistance of counsel or advocates.

4. An application made by a natural or juridical person or State enterprise shall be accompanied by:

(a) the instrument, instruments or statute constituting and regulating the juridical person;

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(b) proof that appropriate authorization has been granted to applicant's counsel or advocates.

5. If an application does not comply with the requirements set out in paragraph 2 of article 126 and paragraphs 1, 2 and 4 of article 127, the Registrar shall prescribe a reasonable period within which the applicant is to comply with them. If the applicant fails to do so within the time prescribed, the Chamber may declare that the application is inadmissible in its present form, or accept it in the form presented, taking into account the circumstances of the case.

6. In a case where paragraph 5 applies, service shall be affected in such manner as the Registrar shall direct as soon as the application has been put in order or the Chamber has declared it admissible in the form presented.

## Article 128

1. The application shall be served on the respondent. The application shall also be served on the sponsoring State in any case where the applicant or respondent is a natural or juridical person or a State enterprise.

2. Within two months after service of the application, the respondent shall lodge a defence, stating:

(a) the name and permanent residence or registered office address of the respondent;

(b) the matters in issue between the parties to the dispute and the grounds on which the defence is based;

(c) any decision or measure sought by the respondent;

(d) the nature of any evidence on which the defence is founded.

The provisions of paragraphs 2 to 5 of article 127 shall apply in a corresponding manner to the defence.

3. The time-limit laid down in paragraph 2 may be extended by the President of the Chamber on a reasoned application by the respondent.

## Article 129

1. Within two months after service of the application in accordance with paragraph 1 of article 128, where the respondent is a sponsoring State in a case brought by a natural or juridical person sponsored by another State Party in a dispute referred to in article 187, subparagraph (c), of the Convention, the respondent sponsoring State may make an application in accordance with article 190, paragraph 2, of the Convention for the sponsoring State of the applicant to appear in the proceedings on behalf of the applicant.

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2. Notice of an application under paragraph 1 shall be communicated to the applicant and its sponsoring State. Failing substitution of the sponsoring State of the applicant within the time-limit to be established by the President of the Chamber therefor, the respondent sponsoring State may designate a juridical person of its nationality to represent it.

3. Paragraphs 2 to 6 of article 127 shall apply to a juridical person designated as respondent.

4. Within two months after the service of the application in accordance with paragraph 1 of article 128 to a sponsoring State of a natural or juridical person, if such sponsoring State is not a party, it may make an application to submit written or oral statements in accordance with article 190 of the Convention.

5. Upon receipt of a such a request, the President of the Chamber will determine and the sponsoring State shall be notified of the time-limits within which it may submit its written statements. It shall also be notified to submit its oral statement in the course of the oral proceedings. The written statements shall be communicated to the parties and to any other sponsoring State of a party.

6. The time-limits laid down in this article may be extended by the President of the Chamber on a reasoned application.

### Article 130

1. The application originating the proceedings and the defence may be supplemented by a reply from the applicant and by a rejoinder from the respondent.

2. The President shall fix the time-limits within which these pleadings are to be lodged.

3. In reply or rejoinder a party may indicate further evidence. The party must, however, give reasons for the delay in indicating it.

4. No fresh issue may be raised in the course of proceedings unless it is based on matters of law or of fact which come to light in the course of the written or oral proceedings.

5. If, in the course of the written proceedings, one of the parties raises a fresh issue which is so based, the President may, even after the expiry of the normal procedural time-limits, allow the other party time to answer on that issue.

6. The decision on the admissibility of the issue shall be reserved for the final judgment.

### Article 131

The Chamber may, at any time, after hearing the parties, order that for the purpose of the written or oral proceedings or of its final judgment, a number of related cases concerning the same subject-matter shall be dealt with jointly. The decision to join the cases may be subsequently rescinded.

### Article 132

Upon the closure of the written proceedings, the case is ready for hearing. Subsection 5 of section C of part IV shall apply, *mutatis mutandis*, to oral proceedings before the Seabed Disputes Chamber.

### Article 133

1. An application under article 185, paragraph 2, of the Convention shall be submitted to the Seabed Disputes Chamber in accordance with article 126, paragraph 1, of this section.

2. Such application shall be submitted to the Seabed Disputes Chamber in accordance with article 162, paragraph 2 (u), of the Convention, by the Secretary-General of the Authority on behalf of the Council of the International Seabed Authority and shall be accompanied by a duly certified copy of the decision or resolution of the Council upon which the application is based.

3. When an application is submitted under this article, for the purposes of the proceedings before the Seabed Disputes Chamber, the Secretary-General of the Authority shall be considered the applicant in the case. 8/

## Subsection 2. Special reference to the Seabed Disputes Chamber

### Article 134

1. When, in accordance with article 188, paragraph 2, of the Convention, a question relating to the interpretation of the Convention is referred to the Seabed Disputes Chamber for a ruling by a commercial arbitral tribunal, the relevant provisions of the Convention, the Statute and these Rules which govern disputes shall apply.

2. The reference of a question to the Seabed Disputes Chamber shall contain a precise statement of the question raised in relation to the interpretation of the Convention on which a ruling is requested.

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## Section D. Ad hoc chambers of the Seabed Disputes Chamber

### Article 135

1. An ad hoc chamber of the Seabed Disputes Chamber shall be formed in accordance with article 36 of the Statute when a dispute has been submitted to the Chamber at the request of any party to the dispute, in accordance with article 188, paragraph 1 (b), of the Convention.

2. The appointment of Members of the ad hoc chamber shall be made as soon as possible after the submission of the request as referred to in paragraph 1. The President of the Seabed Disputes Chamber shall establish time-limits for the parties to make their appointments and to appoint the third member by agreement. If either party fails to make its appointment, or if the parties fail to agree on the third member within the time-limits, the President shall promptly make the appointment or appointments after consultation with the parties.

## Section E. Notifications for enforcement

### Article 136

At the request of a party to the dispute, for the enforcement of any decision of the Seabed Disputes Chamber or its ad hoc chambers against natural or juridical persons in accordance with annex III, article 21, paragraph 2, or annex VI, article 39, of the Convention, the Registrar of the Tribunal shall directly communicate a duly certified copy of the judgment or order to the Government of the State Party in whose territory the enforcement is sought, for enforcement in the same manner as judgments or orders of the highest court of that State.

# PART VI

# ADVISORY PROCEEDINGS

### Article 137

1. In the exercise of its advisory functions under articles 159, paragraph 10, and 191 of the Convention, the Seabed Disputes Chamber shall apply [, in addition to the provisions of article 159, paragraph 10, of the Convention,] the provisions of the present part of the Rules.

2. The Seabed Disputes Chamber shall also apply the provisions of the Statute, in accordance with article 40, paragraph 2, thereof. It shall also be guided by the provisions of these Rules which apply in disputes to the extent to which it recognizes them to be applicable. For this purpose, it shall consider whether the request for the advisory opinion relates to a legal question which is pending between two or more States Parties.

3. When an advisory opinion is requested upon a legal question which is pending between two or more States Parties, article 17 of the Statute concerning

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the nationality of Members shall apply, as also the provisions of these Rules concerning the application of that article.

## Article 138

1. Questions upon which the advisory opinion of the Chamber is requested by the Assembly or the Council shall be transmitted to the Chamber on their behalf by the Secretary-General of the International Seabed Authority by means of a written request. The request shall contain an exact statement of the legal question arising within the scope of the activities of the Assembly or the Council upon which an opinion is required. It shall be accompanied by all documents likely to throw light upon the question.

2. The documents referred to in paragraph 1 shall be transmitted to the Chamber at the same time as the request or as soon as possible thereafter in the number of copies required by the Registry.

## Article 139

Without prejudice to article 159, paragraph 10, of the Convention, the Assembly or the Council of the International Seabed Authority may not request an advisory opinion on matters which are already under consideration in a contentious case between the Authority and another party.

## Article 140

When the Assembly of the International Seabed Authority informs the Chamber that its request for an advisory opinion is in accordance with article 159, paragraph 10, of the Convention or necessitates an urgent answer, the Chamber shall, pursuant to article 191 of the Convention, take all necessary steps to accelerate the procedure, and shall as a matter of urgency hear and deliberate on the request.

## Article 141

1. The Registrar shall forthwith give notice of the request for an advisory opinion to all States Parties. Any State Party may present a written statement or be heard on the question upon which the advisory opinion has been sought and the Chamber shall decide on the time-limit for such presentation.

2. The Registrar shall also, by means of a special and direct communication, notify any international organization, other than those referred to in article 1 of annex IX of the Convention, considered by the Chamber or, should it not be sitting, by the President of the Chamber, as likely to be able to furnish information on the question, that the Chamber will be prepared to receive, within a time-limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

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3. States Parties and organizations having presented written or oral statements shall be permitted to comment exclusively on the statements made by other States Parties or organizations within the time-limits which the Chamber, or, should it not be sitting, the President of the Chamber, shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to States Parties and organizations having submitted similar statements.

## Article 142

The Chamber, or its President if the Chamber is not sitting, shall:

(a) Determine the form in which, and the extent to which, comments permitted under article 141, paragraph 3, of these Rules shall be received, and fix the time-limit for the submission of any such comments in writing;

(b) Decide whether oral proceedings shall take place at which statements and comments may be submitted to the Chamber under the provisions of article 141 of these Rules and fix the date for the opening of such oral proceedings.

## Article 143

The Chamber, or its President if the Chamber is not sitting, may decide that the written statements and annexed documents shall be made accessible to the public on or after the opening of the oral proceedings. If the request for advisory opinion relates to a legal question which is pending between two or more States Parties, the views of those States Parties shall be ascertained.

## Article 144

1. When the Chamber has completed its deliberations and adopted its advisory opinion, the opinion shall be read at a public sitting of the Chamber. The President or Acting President may read the opinion at a public sitting at which all Members and Members ad hoc of the Chamber constituting the bench may not be present.

2. The advisory opinion shall contain:

(a) The date on which it is delivered;

(b) The names of the Members and Members ad hoc participating in it;

(c) The question on which the advisory opinion of the Chamber is requested;

(d) A summary of the proceedings;

(e) A statement of the facts;

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(f) The reasons of fact and law on which it is based;

(g) The reply to the question put to the Chamber;

(h) The number and names of the Members and Members ad hoc constituting the majority and those of the minority;

(i) A statement as to the text of the opinion which is authoritative.

3. Any Member or Member ad hoc may, if he so desires, attach his individual opinion to the advisory opinion of the Chamber, whether he dissents from the majority or not; a Member or Member ad hoc who wishes to record his concurrence or dissent without stating his reasons may do so in the form of a declaration.

## Article 145

The Registrar shall inform the Secretary-General of the International Seabed Authority as to the date and the hour fixed for the public sitting to be held for the reading of the opinion. He shall also inform the representatives of the members of the International Seabed Authority and the international organizations immediately concerned.

## Article 146

One copy of the advisory opinion, duly signed and sealed, shall be placed in the archives of the Tribunal, others shall be sent to the Secretary-General of the International Seabed Authority and to the Secretary-General of the United Nations. Copies shall be sent by the Registrar to the members of the International Seabed Authority and to international organizations immediately concerned.

## Notes

1/ This will be the date on which the terms of office of the Members of the Tribunal elected at the first election begins.

2/ The International Court of Justice has adopted a resolution which is now in force.

3/ A decision will have to be taken by the Meeting of States Parties as to what will be the official languages of the Tribunal; and in the absence of agreement between parties to a dispute as to which language should be employed, the number of languages in which the judgment will be given.

4/ See note 3, supra.

5/ The agents of the parties are requested to ascertain from the Registry the usual format of the pleadings, and the conditions on which the Tribunal may bear part of the cost of reproduction.

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6/ There are no specific provisions in the Statute of the Tribunal relating to the revision of judgments. Nevertheless, the Preparatory Commission considers the inclusion of such provisions in the Rules of the Tribunal to be appropriate.

7/ This will be the date on which the terms of office of the Members of the Chamber first selected begin.

8/ The question as to whether such applications would be in the name of the Authority or of the Council would have to be decided.

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LOS/PCN/SCN.4/WP.16/Add.2
14 October 1993

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY AND
FOR THE INTERNATIONAL TRIBUNAL
FOR THE LAW OF THE SEA
Special Commission 4

# PROVISIONAL REPORT OF SPECIAL COMMISSION 4

## (DRAFT REPORT OF THE PREPARATORY COMMISSION UNDER PARAGRAPH 10 OF RESOLUTION I CONTAINING RECOMMENDATIONS FOR SUBMISSION TO THE MEETING OF STATES PARTIES TO BE CONVENED IN ACCORDANCE WITH ANNEX VI, ARTICLE 4, OF THE CONVENTION REGARDING PRACTICAL ARRANGEMENTS FOR THE ESTABLISHMENT OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA)

## Addendum

(Final draft Headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany)

(LOS/PCN/SCN.4/WP.5/Rev.2)

## Explanatory note

1. The final draft Headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany contained herein was prepared pursuant to the decision of Special Commission 4 (LOS/PCN/L.101, para. 4). It constitutes addendum 2 to document LOS/PCN/SCN.4/WP.15 (Draft Report of the Preparatory Commission under paragraph 10 of resolution I containing recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea), as referred to in the introductory note thereto, first paragraph. Pursuant to the decision of the Preparatory Commission, the Draft Report was reviewed and revised. The revision is entitled "Provisional Report of Special Commission 4 (Draft Report of the Preparatory Commission under paragraph 10 of resolution I containing recommendations for submission to the Meeting of States Parties to be convened in accordance with Annex VI, article 4, of the Convention regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea)" (LOS/PCN/SCN.4/WP.16). The present paper constitutes Addendum 2 to LOS/PCN/SCN.4/WP.16, the Provisional Report of Special Commission 4.

2. The present working paper takes into account the deliberations of the Special Commission, commencing with its consideration of the draft Headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany (LOS/PCN/SCN.4/WP.5/Parts I and II), which was reviewed by the Special Commission during the 1987 summer meeting of the Preparatory Commission (27 July-21 August 1987) and at the sixth session (14 March-8 April 1988). The discussions are reflected in the Chairman's summaries (LOS/PCN/SCN.4/L.11 and Add.1).

3. At the request of the Special Commission, the Secretariat prepared a revision of the draft in the light of the discussions, taking into account the matters on which there was agreement, the views expressed and the suggestions made by delegations, including drafting suggestions handed to the Secretariat. The revised draft was issued as document LOS/PCN/SCN.4/WP.5/Rev.1.

4. That revised draft Headquarters Agreement was reviewed at the summer meeting of the Preparatory Commission (12-30 August 1991) and at the tenth session (24 February-13 March 1992).

5. The present document incorporates the results of those discussions, and the agreements and understandings reached by the Special Commission concerning the provisions of the revised draft Headquarters Agreement and the suggested redraft in LOS/PCN/SCN.4/1992/CRP.45. It is to be noted that the provision regarding authentic texts would depend on the final determination as to the official languages of the Tribunal.

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# FINAL DRAFT AGREEMENT BETWEEN THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA AND THE FEDERAL REPUBLIC OF GERMANY REGARDING THE HEADQUARTERS OF THE TRIBUNAL

THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA AND THE FEDERAL REPUBLIC OF GERMANY

HAVING REGARD to the United Nations Convention on the Law of the Sea, in particular to its annex VI, and that pursuant thereto, the seat of the International Tribunal for the Law of the Sea shall be in the Free and Hanseatic City of Hamburg in the Federal Republic of Germany,*

HAVING REGARD to the legal personality of the Tribunal and the provisions of the Protocol on Privileges and Immunities of the International Tribunal for the Law of the Sea,

HAVE AGREED AS FOLLOWS:

## Article 1

### Use of terms

For the purposes of this Agreement:

(a) "Convention" means the United Nations Convention on the Law of the Sea;

(b) "Statute" means the Statute of the International Tribunal for the Law of the Sea, annex VI of the Convention;

(c) "Rules" means the Rules of the International Tribunal for the Law of the Sea;

(d) "Protocol" means the Protocol on Privileges and Immunities of the International Tribunal for the Law of the Sea;

(e) "States Parties" shall have the same meaning as referred to in article 1 of the Convention;

(f) "Tribunal" means the International Tribunal for the Law of the Sea;

(g) "Authority" means the International Seabed Authority;

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* See the requirement recorded in paragraph 38 of the Final Act of the Third United Nations Conference on the Law of the Sea (A/CONF.62/121) stating that the decisions on the sites of the Authority and the Tribunal had been taken by the informal plenary subject to the requirement that the States specified should have ratified the Convention by the time of its entry into force and should remain Parties to it thereafter.

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(h) "the host country" means the Federal Republic of Germany;

(i) "Government" means the Government of the Federal Republic of Germany;

(j) "Competent authorities" means such Bund (federal), Länder (state), or local authorities in the Federal Republic of Germany as may be appropriate in the context and in accordance with the laws, regulations and customs of the Federal Republic of Germany, including the laws, regulations and customs of the Länder (State) and local authorities involved;

(k) "Member" means an elected member of the Tribunal as referred to in article 2 of the Statute and article 2 of the Rules;

(l) "Member ad hoc" means a person chosen under article 17 of the Statute for the purpose of a particular case;

(m) "officials of the Tribunal" means the Registrar and other members of the staff of the Registry;

(n) "expert" means a person called at the instance of a party to a dispute or at the instance of the Tribunal to present testimony in the form of expert opinions, based on his special knowledge, skills, experience or training;

(o) "expert appointed under article 289 of the Convention" means a person appointed in accordance with that article to sit with the Tribunal;

(p) "Headquarters district" means the area defined in article 3 of this Agreement;

(q) "international organization" means an intergovernmental organization.

## Article 2

## Juridical personality of the Tribunal

In accordance with its juridical personality the Tribunal has, in particular, the capacity:

(a) to contract;

(b) to acquire and dispose of movable and immovable property;

(c) to institute legal proceedings.

## Article 3

## The Headquarters district

1. The seat of the Tribunal shall be the Headquarters district, which shall comprise:

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(a) the area with the building or buildings upon it, defined as such in the annex to this Agreement; and

(b) any other lands, buildings or part of buildings which may from time to time be included therein by supplementary agreement between the Tribunal and the competent authorities.

2. The area with the required building or buildings referred to in paragraph 1 (a), together with the installations, equipment, fittings and all other facilities therein which are required for the effective functioning of the Tribunal, shall be made available to it in accordance with the Additional Agreement concluded between the Tribunal and the Government.

## Article 4

## Law and authority in the Headquarters district

1. The Headquarters district shall be under the control and authority of the Tribunal, in accordance with this Agreement.

2. The Tribunal shall have the power to make regulations operative throughout the Headquarters district for the purpose of establishing therein the conditions in all respects necessary for the full execution of its functions. The Tribunal shall promptly inform the competent authorities of regulations thus enacted in accordance with this paragraph. No federal, state or local law or regulation of the host country which is inconsistent with a regulation of the Tribunal authorized by this paragraph shall, to the extent of such inconsistency, be applicable within the Headquarters district.

3. Any dispute between the Tribunal and the host country as to whether a regulation of the Tribunal is authorized by paragraph 2 or as to whether a federal, state or local law or regulation of the host country is inconsistent with any regulation of the Tribunal authorized by paragraph 2, shall be promptly settled by the procedure set out in article 31. Pending such settlement, the regulation of the Tribunal shall apply and the federal, state or local law or regulation of the host country shall be inapplicable in the Headquarters district to the extent that the Tribunal claims it to be inconsistent with the regulation of the Tribunal.

4. Except as otherwise provided in this Agreement or in the Protocol and subject to the provisions of paragraph 2 of this article, the laws and regulations of the host country shall apply in the Headquarters district.

5. Except as otherwise provided in this Agreement or in the Protocol, the courts or other competent authorities shall have jurisdiction, as provided in applicable laws, over acts done and transactions taking place in the Headquarters district.

6. The competent authorities, when dealing with cases arising out of or relating to acts done or transactions taking place in the Headquarters district, shall take into account the regulations enacted by the Tribunal under this article.

## Article 5

### Inviolability of the Headquarters district

1. The Headquarters district shall be inviolable. No officer or official of the host country or other person exercising any public authority within the host country shall enter the Headquarters district to discharge any official duty except upon the express consent of or at the request of the President or Acting President of the Tribunal and in accordance with conditions approved by him.

2. Judicial actions and the service or executions of legal process, including the seizure of private property, cannot be enforced in the Headquarters district except with the consent of and in accordance with conditions approved by the President or Registrar of the Tribunal.

3. In case of fire or other emergency requiring prompt protective action, or in the event that the competent authorities have reasonable cause to believe that such an emergency has occurred or is about to occur in the Headquarters district, the consent of the President of the Tribunal to any necessary entry of the Headquarters district shall be presumed if neither the President nor the Registrar can be reached in time.

4. Subject to paragraphs 1 and 3, the competent authorities shall take the necessary action to protect the premises of the Tribunal against fire or other emergency.

5. Without prejudice to the Convention, this Agreement and the Protocol, the Tribunal shall not allow the Headquarters district to become a refuge from justice for persons against whom a penal judgement had been made or who are pursued flagrante delicto, or against whom a warrant of arrest or an order of extradition, expulsion or deportation has been issued by the competent authorities.

6. Subject to paragraphs 1 and 2, nothing in this article shall preclude the official delivery by the postal service, to the Headquarters district, of letters and documents.

7. The Tribunal may expel or exclude persons from the Headquarters district for violation of its regulations adopted under article 4.

## Article 6

### Vicinity of the Headquarters district

1. The competent authorities shall take all reasonable measures to ensure that the amenities of the Headquarters district are not impaired and that the use for which the Headquarters district is intended is not obstructed by the use made of the land and buildings in the vicinity of the Headquarters district.

2. The Tribunal shall ensure that the Headquarters district is not used for other purposes than for which it is intended and shall take all reasonable

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measures to ensure that the land and buildings in its vicinity are not unreasonably obstructed.

## Article 7

## Protection of the Headquarters district

1. The competent authorities shall take whatever measures may be necessary to ensure that the Tribunal shall not be dispossessed of all or any part of the Headquarters district without the express consent of the Tribunal.

2. The competent authorities shall exercise due diligence to ensure that the tranquillity of the Headquarters district is not disturbed by the unauthorized entry of persons or groups of persons from outside or by disturbances in the immediate vicinity and shall provide to the Headquarters district the appropriate protection as may be required for these purposes.

3. The competent authorities shall provide the police or security forces necessary for the preservation of law and order in the Headquarters district and the removal therefrom of persons, if so requested by a duly authorized official of the Tribunal.

## Article 8

## Immunity of the Tribunal, its property, assets and funds

1. The Tribunal shall enjoy immunity from legal process, except in so far as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

2. The property, assets and funds of the Tribunal, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, seizure, expropriation or any other form of interference, whether by executive, administrative, judicial or legislative enforcement action.

3. The property and assets of the Tribunal shall be exempt from restrictions, regulations, controls and moratoria of any nature.

4. The immunities referred to in this article shall not extend to an action for damages arising from an accident involving a vehicle the use of which may have entailed the liability of the Tribunal to the extent that those damages are not recoverable from insurance. Pursuant to the laws and regulations of the host country, the Tribunal shall be required to have insurance coverage against third-party risks in respect of vehicles owned or operated by it.

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## Article 9

## Archives

The archives and documents of the Tribunal shall be inviolable at all times and wherever they may be located in the host country. The location of the archives of the Tribunal shall be made known to the competent authorities if it is at a place other than in the Headquarters district.

## Article 10

## Public services in the Headquarters district

1. The competent authorities shall do their utmost to ensure, in accordance with the request made by a duly authorized official of the Tribunal, and on equitable terms, the provision of the public services needed by the Tribunal, such as postal, telephone and telegraph services, electricity, water, gas, sewerage, collection of waste, fire protection, local transportation and cleaning of public streets.

2. In case of interruption or threatened interruption of any such services, the competent authorities shall consider the needs of the Tribunal as being of equal importance with the needs of the essential agencies and organs of the Federal Government and of the constitutional organs of the Free and Hanseatic City of Hamburg and will take steps accordingly to ensure that the work of the Tribunal is not impaired.

3. Upon request of the competent authorities, a duly authorized official of the Tribunal shall make suitable arrangements to enable duly authorized representatives of the appropriate public services to inspect, repair, maintain, reconstruct and relocate utilities, conduits, mains and sewers within the Headquarters district under conditions which shall not unreasonably disturb the carrying out of the functions of the Tribunal. Underground constructions may be undertaken by the competent authorities within the Headquarters district only after consultation with an authorized official of the Tribunal, and under conditions which shall not disturb the carrying out of the functions of the Tribunal.

4. In cases where gas, electricity or water are supplied by the competent authorities or where the prices thereof are under their control, the Tribunal shall be supplied at rates which shall not exceed the lowest comparable rates accorded to the Federal or local governmental or administrative authorities.

## Article 11

## Communications

1. The Tribunal shall enjoy, as far as compatible with the international treaties, regulations and arrangements to which the host country is a party, for its official communications treatment not less favourable than that accorded by the host country to Federal and local authorities or to international

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organizations and diplomatic missions, in the matter of priorities and rates for mail, cables, telegrams, radiograms, telex, facsimile, telephotos, television, telephone and other forms of communications as well as press rates for information to press and radio.

2. The competent authorities shall secure the inviolability of all communications and correspondence directed to the Tribunal, or to any of its officials in the Headquarters district, as well as all outgoing communications and correspondence of the Tribunal, by whatever means or in whatever form transmitted, and they shall be immune from censorship or any other form of interference with their privacy. Such inviolability shall extend, without limitation by reason of this enumeration, to publications, still and moving pictures, films and sound or videotape recordings.

3. The Tribunal shall have the right to use codes and to dispatch and receive correspondence and other materials or communications by courier or in sealed bags, which shall have the same privileges and immunities as diplomatic couriers and bags.

4. If so requested by a duly authorized official of the Tribunal, the competent authorities shall provide for the official purposes of the Tribunal appropriate radio and other telecommunications facilities. These facilities may be specified by supplementary agreement between the Tribunal and the competent authorities.

5. Subject to the necessary authorization by the Meeting of States Parties and with the agreement of the Government as may be included in a supplementary agreement, the Tribunal may also establish and operate at the Headquarters district:

(a) its own short-wave sending and receiving radio broadcasting facilities (including emergency link equipment) which may be used on the same frequencies (within the tolerance prescribed for the broadcasting service by applicable regulations of the host country) for radiograph, radiotelephone and similar services;

(b) such other radio facilities as may be specified by supplementary agreement between the Tribunal and the competent authorities.

6. The Tribunal shall have the right to publish and broadcast freely and without restriction within the host country for purposes in conformity with the Convention and its Statute.

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## Article 12

## Flag and emblem*

The Tribunal shall be entitled to display its flag and emblem in the Headquarters district and on vehicles used for official purposes.

## Article 13

## Social security and pension funds

1. The Tribunal, its Members and officials shall be exempt from all compulsory contributions to the social security scheme of the host country in the event that they do not participate in such scheme, if they are covered by a social security scheme providing adequate benefits for them in accordance with international practice.

2. Voluntary participation in the national social security scheme of the host country shall be in accordance with the laws of the host country.

3. Any pension fund established by the Tribunal with separate property and assets shall have legal capacity in accordance with the laws of the host country if the Tribunal so requests, and shall enjoy the same exemptions, immunities and privileges as the Tribunal itself.

## Article 14

## Exemption from taxes, customs duties and import or export restrictions

1. The Tribunal, its assets, income and other property, and its operations and transactions shall be exempt from all direct taxes; it is understood, however, that the Tribunal shall not claim exemption from taxes which are no more than charges for public utility services. Direct taxes shall be considered to be all taxes whether levied directly by the Federal Government, by a Land (State) or any other regional or local authority and such taxes shall, in particular, include income tax or corporate tax, trade tax, property tax and land tax. The motor vehicles belonging to or operated by the Tribunal shall, upon notification, be exempted from motor vehicle tax.

2. The Tribunal shall be exempt from all customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the Tribunal for its use. Goods imported or purchased under such an exemption shall not be sold or otherwise disposed of in the territory of the host country, except under conditions agreed with the competent authorities. The Tribunal shall also be exempt from all customs duties, prohibitions and restrictions on imports and exports in respect of its publications.

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* A relevant decision on the flag and emblem of the Tribunal will have to be taken by the Meeting of States Parties.

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3. In the purchase of goods or services necessary for the official activities of the Tribunal, when the price of such goods or services includes taxes or duties, the Government shall grant exemption from such taxes or duties or provide for their reimbursement.

4. The salaries, allowances and compensation paid to Members, Members ad hoc and the Registrar of the Tribunal shall be exempt from taxation in accordance with article 18, paragraph 8, of the Statute. The salaries and emoluments paid to the other officials of the Tribunal shall also be exempt from taxation consistent with the established practice of the United Nations.*

## Article 15

## Funds and freedom from currency restrictions

1. Without being restricted by financial controls, regulations or moratoria of any kind, whilst carrying out its activities:

(a) the Tribunal may receive and hold funds or currency of any kind and operate accounts in any currency;

(b) the Tribunal shall be free to transfer its funds, securities or currency from one country to another or within any country and to convert any currency held by it into any other currency;

(c) the Tribunal may receive, hold, negotiate, transfer, convert or otherwise deal with bonds and other financial securities.

2. In exercising its rights under paragraph 1, the Tribunal shall pay due regard to any representations made by the competent authorities in so far as it is considered that effect can be given to such representations without detriment to the interests of the Tribunal.

## Article 16

## Privileges, immunities, facilities and prerogatives

The privileges, immunities, facilities and prerogatives of the individuals referred to in articles 17 to 20 are granted in the interests of the administration of justice by the Tribunal in order to safeguard the independent performance of their official functions and not for the personal benefit of the individuals themselves.

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* The Staff Regulations and Rules of the United Nations make provision for a staff assessment.

## Article 17

## Members and officials of the Tribunal

1. Subject to the provisions of this Agreement, the privileges and immunities to be accorded to Members and officials of the Tribunal within the territory of the host country shall be consistent with those accorded to diplomatic agents in accordance with the Vienna Convention on Diplomatic Relations of 18 April 1961, and in particular they shall be accorded privileges, immunities, facilities and prerogatives as follows:

(a) The Members of the Tribunal shall be entitled to the same privileges, immunities, facilities and prerogatives as the host country accords to heads of diplomatic missions accredited to the host country. The treatment accorded to Members shall also be accorded to the Registrar of the Tribunal and to the Deputy Registrar or any other official of the Tribunal when acting as Registrar;

(b) The Deputy Registrar of the Tribunal shall be entitled to the same privileges, immunities, facilities and prerogatives as are accorded to counsellors attached to diplomatic missions in the host country;

(c) The other officials of the Tribunal shall be entitled to the same privileges, immunities, facilities and prerogatives as the host country accords to officials of comparable rank attached to diplomatic missions in the host country.

2. The spouses and dependent relatives forming part of the household of Members of the Tribunal, the Registrar and the officials of the Tribunal shall receive the same treatment as the Member or official concerned.

3. The domestic staff of the Members and officials of the Tribunal, if they are not nationals or permanent residents of the host country, shall be exempt from dues and taxes on the emoluments they receive by reason of their employment. In other respects, they may enjoy privileges and immunities only to the extent admitted by the host country. However, the host country must exercise its jurisdiction over such persons in such a manner as not to interfere unduly with the performance of the functions of the Tribunal.

4. The Members of the Tribunal shall enjoy the treatment provided for in this article even after the expiry of their terms of office, if they continue to exercise their functions.

5. In order to secure complete freedom of speech and complete independence in the discharge of their duties, the Members and officials of the Tribunal shall continue to enjoy immunity from legal process in respect of words spoken and written and all acts done by them in the discharge of their duties even when they are no longer engaged in the business of the Tribunal.

6. Members and officials shall be given, together with their spouses and dependent relatives forming part of their household, the same repatriation facilities in time of international crises as diplomatic agents are given under the Vienna Convention on Diplomatic Relations of 18 April 1961 and international law.

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7. The provisions of paragraphs 1 and 2 shall be applicable irrespective of the relations existing between the Government of which such an individual is a national and the host country.

## Article 18

### Members ad hoc and experts appointed under article 289 of the Convention

The privileges, immunities, facilities and prerogatives accorded to Members of the Tribunal, their spouses and dependent relatives forming part of their household and domestic staff, in accordance with article 17, shall apply, *mutatis mutandis*, to Members ad hoc and experts appointed under article 289 of the Convention in the discharge of their duties and to their spouses and dependent relatives forming part of their household and domestic staff while such Members ad hoc and experts are exercising their functions. The provisions of article 17, paragraph 5, shall apply *mutatis mutandis* to Members ad hoc and experts appointed under article 289 of the Convention even when they are no longer engaged in the business of the Tribunal.

## Article 19

### Agents representing parties, counsel and advocates designated to appear before the Tribunal

1. Agents representing parties to proceedings before the Tribunal as well as counsel and advocates appearing before it shall, without prejudice to paragraph 2, be accorded the privileges, immunities and facilities necessary for the independent exercise of their duties during their journey to and from the Headquarters district, and while exercising their functions. They shall be accorded:

(a) immunity from any form of personal arrest, search or detention and from seizure of their personal baggage;

(b) exemption from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles not for personal use or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the host country. An inspection in such a case shall be conducted in the presence of the agent, counsel or advocate concerned;

(c) immunity from legal process of every kind in respect of words spoken and written and all acts done by them while discharging their duties as representatives of parties before the Tribunal, which immunity shall continue even after they have ceased to exercise their functions;

(d) inviolability of documents and papers;

(e) the right to receive papers or correspondence by courier or in sealed bags;

/...

(f) exemption in respect of themselves and their spouses from immigration restrictions or alien registration;

(g) the same facilities in respect of their personal baggage and in respect of currency or exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions;

(h) the same repatriation facilities in time of international crises as are accorded to diplomatic agents under the Vienna Convention on Diplomatic Relations of 18 April 1961 and international law.

2. The representatives of States Parties who may be agents, counsel or advocates appearing before the Tribunal shall, notwithstanding anything to the contrary in paragraph 1, enjoy the privileges, immunities, facilities and prerogatives which, in accordance with the Vienna Convention on Diplomatic Relations of 18 April 1961 and international law, are accorded to diplomatic agents.

3. For the purposes of paragraph 1, parties to proceedings before the Tribunal shall include States other than States Parties, entities other than States, the Authority, natural persons and juridical persons and sponsoring States or entities substituted for parties to proceedings in accordance with article 190 of the Convention.

4. The provisions of paragraphs 1 and 2 shall be applicable irrespective of the relations existing between the Government of which such an individual is a national and the host country.

5. Upon receipt of notification from parties to proceedings before the Tribunal as to the appointment of an agent, counsel or advocate, a certification of the status of such representative shall be provided under the signature of the Registrar and limited to a period reasonably required for the proceedings.

6. The Registrar shall notify the competent authorities of the appointment of authorized agents, counsel or advocates of parties, indicating the prospective period for which their presence in and travel within the host country will be required.

7. The competent authorities shall accord the privileges, immunities, facilities and prerogatives to agents, counsel and advocates provided in this article upon production of the certification referred to in paragraph 5.

## Article 20

## Witnesses, experts and persons performing missions

1. Witnesses, experts and persons performing missions by order of the Tribunal shall be accorded the privileges, immunities and facilities necessary for the independent exercise of their functions, while on mission and during their journey to and from the Headquarters district. In particular, they shall be accorded the privileges, immunities and facilities accorded to agents, counsel and advocates under article 19, paragraph 1, subparagraphs (a) to (h).

2. Witnesses and experts appointed pursuant to article 67 of the Rules and persons performing missions shall be accorded the same privileges and immunities as are accorded to agents, counsel and advocates under article 19, paragraph 1, provided that a witness or expert who is a diplomatic agent of a State Party shall be accorded the same treatment accorded to agents, counsel or advocates who are diplomatic agents under article 19, paragraph 2.

3. The Federal, state or local authorities of the host country shall not impose any impediment to the transit to and from the Headquarters district of persons invited to the Headquarters district by the Tribunal on official business. The competent authorities shall afford any necessary protection to such persons while in transit to or from the Headquarters district. Such persons shall mutatis mutandis enjoy the privileges, immunities and facilities accorded to persons performing official missions for the Tribunal in accordance with this article.

4. The provisions of paragraphs 1 and 2 shall be applicable irrespective of the relations existing between the Government of which such an individual is a national and the host country.

## Article 21

## Nationals and residents of the host country

1. The members and officials of the Tribunal and persons referred to in articles 17 to 20 who may be nationals or residents of the host country are not subject to the local jurisdiction in respect of words spoken or written and any act performed by them in their official capacity and within the scope of their duties.

2. Nationals or residents of the host country who are officials of the Tribunal of whatever rank are exempt from direct taxation on the remunerations paid to them from the Tribunal's budget in accordance with article 14, paragraph 4.

## Article 22

## Waiver

1. A State Party not only has the right but is under a duty to waive the immunity of its representatives referred to in article 19, paragraph 2, and of witnesses and experts referred to in article 20, paragraph 2, who are diplomatic agents of a State Party, in any case where in the opinion of the State Party the immunity would impede the course of justice and it can be waived without prejudice to the administration of justice by the Tribunal and the purpose for which the immunity is accorded.

2. The right and the duty to waive immunity of representatives of parties who may be agents, counsel or advocates appearing before the Tribunal and witnesses or experts appearing at the instance of such parties, other than diplomatic agents of a State Party, shall lie with the Tribunal, after hearing the

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individual concerned, by a unanimous decision of its available Members and where, in its opinion, the immunity is not directly related to or incidental to the performance of official functions and would impede the course of justice and it can be waived without prejudice to the administration of justice by the Tribunal and the purpose for which the immunity is accorded.

3. The right and the duty to waive immunity of the Registrar or Deputy Registrar or any other official of the Tribunal when acting as Registrar and of experts appointed under article 289 of the Convention, shall lie with the Tribunal, after hearing the individual concerned, by a unanimous decision of its available Members and where, in its opinion, the immunity is not directly related to or incidental to the performance of official functions and would impede the course of justice and it can be waived without prejudice to the administration of justice by the Tribunal and the purpose for which the immunity is accorded.

4. The right and the duty to waive immunity of witnesses appearing at the instance of, and experts and persons performing missions by order of, the Tribunal, and invitees, referred to in article 20, paragraphs 1 and 3, shall lie with the Tribunal, after hearing the individual concerned, by a unanimous decision of its available Members and where, in its opinion, the immunity is not directly related to or incidental to the performance of official functions and would impede the course of justice and it can be waived without prejudice to the administration of justice by the Tribunal and the purpose for which the immunity is accorded.

5. The right and the duty to waive immunity of the Deputy Registrar or other officials of the Tribunal and members of their households, shall lie with the Registrar, with the President's approval and after hearing the individual concerned, and where, in the Registrar's opinion, the immunity is not directly related to or incidental to the performance of official functions and would impede the course of justice and it can be waived without prejudice to the administration of justice by the Tribunal and the purpose for which the immunity is accorded.

## Article 23

## Laissez-passer, identity cards and notifications*

1. The competent authorities recognize and accept laissez-passer issued by the Tribunal to the Members and officials of the Tribunal as valid travel documents, taking into account the provisions of article 24, paragraph 4.

2. The Registrar shall, on behalf of the Tribunal, furnish persons referred to in articles 18 to 20 with an identity card stating the name, date and place of birth and the number of passport or number of national identity card and bearing a photograph and signature of the person concerned. This identity card shall

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* In the event that arrangements are entered into with the United Nations for the issuance of laissez-passer of the United Nations, the Tribunal may not need to issue its own laissez-passer.

serve to identify the holder and his official capacity in relation to the Tribunal, to the competent authorities. In the case of a stateless person, the travel documents issued by a State will for the purpose of this paragraph be treated as a passport or a national identity card.

3. The Registrar shall notify the competent authorities when any person mentioned in article 17 takes up or relinquishes his duties, and shall periodically send the competent authorities a list of all such persons with information as to the name, date and place of birth, nationality, home address, functions before the Tribunal and the anticipated duration of service.

4. The Registrar shall notify the competent authorities of the nomination of agents, counsel and advocates referred to in article 19. When attendance before the Tribunal by a person referred to in articles 19 and 20 is required, the Registrar shall notify the competent authorities immediately. This information shall state the name, date and place of birth and home address of the person concerned as well as his functions before the Tribunal and the anticipated duration of his functions.

## Article 24

### Entry, transit and sojourn in the host country

1. The competent authorities shall take all necessary measures to facilitate the entry into and sojourn in the host country, and shall place no impediment in the way of departure from the host country, of the persons referred to in articles 17 to 20 and also ensure them the necessary protection. The competent authorities shall ensure that no impediment is placed in the way of their transit to or from the Headquarters seat and shall afford them the necessary protection.

2. Paragraph 1 of this article shall not apply in the case of general interruptions of transportation, and shall not impair the effectiveness of generally applicable laws relating to the operation of means of transportation.

3. Visas which may be required by persons referred to in articles 17 to 20 shall be granted without charge and as promptly as possible.

4. Applications for visas (where required) from the Members of the Tribunal and the Registrar should be dealt with as speedily as possible. All other holders of laissez-passer should receive the same facilities when their applications for visas are accompanied by a certificate that they are travelling on the business of the Tribunal. In addition, all holders of laissez-passer should be granted facilities for speedy travel.

5. Similar facilities to those specified in paragraph 4 should be accorded to witnesses, experts and other persons who, though not the holders of laissez-passer delivered by the Tribunal, have a certificate that they are travelling on the business of the Tribunal.

6. No activity performed by any person referred to in articles 17 to 20 in his official capacity with respect to the Tribunal shall constitute a reason for

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preventing his entry into or his departure from the territory of the host country or for requiring him to leave such territory.

7. It is understood that the persons referred to in articles 17 to 20 are not exempt from any reasonable application of the internationally accepted rules governing quarantine and public health.

## Article 25

### Maintenance of security and public order

1. Nothing in this Agreement shall affect the right of the host country to take, with the approval of the President of the Tribunal, the precautions necessary for its security or for the maintenance of public order.

2. If the host country considers it necessary to apply paragraph 1 of this article, it shall approach the Tribunal as rapidly as circumstances allow in order to determine by mutual agreement the measures necessary to protect the Tribunal.

## Article 26

### Responsibility, liability and insurance

1. The host country shall not incur by reason of the location of the Headquarters seat of the Tribunal within its territory any international responsibility for acts or omissions of the Tribunal or of its officials acting or abstaining from acting within the scope of their functions other than the international responsibility which the host country would incur as a State Party.

2. Without prejudice to its immunities under this Agreement or the Protocol, the Tribunal shall carry insurance to cover liability for any injury or damage arising from the activities of the Tribunal in the host country or from its use of the Headquarters site or buildings erected thereon or vehicles owned or operated by it, that may be suffered by persons other than officials of the Tribunal, or by the Government. To this end, the competent authorities shall secure for the Tribunal, at reasonable rates, insurance coverage permitting claims to be submitted directly to the insurer by parties suffering injury or damage. Such claims and liability shall, without prejudice to the privileges and immunities of the Tribunal, be governed by the laws of the host country.

## Article 27

### Cooperation with the competent authorities

1. The Tribunal shall cooperate at all times with the competent authorities to facilitate to the extent possible the proper administration of justice, secure the observance of police regulations and prevent any abuse in connection with the privileges, immunities and facilities accorded to officials of the Tribunal

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referred to in article 17, paragraph 1, subparagraphs (b) and (c), and paragraphs 2 and 3, and the persons referred to in articles 18 to 20.

2. If the Government considers that there has been an abuse of privilege or immunity conferred by this Agreement, consultations will be held between the competent authorities and the President of the Tribunal to determine whether any such abuse has occurred and, if so, to attempt to ensure that no repetition occurs. If such consultations fail to achieve a result satisfactory to the Government and to the Tribunal, either party may submit the question as to whether such an abuse has occurred for resolution in accordance with the provisions on settlement of disputes under article 31.

3. The Government may only require persons referred to in articles 17 to 20, other than Members, Members ad hoc, the Registrar or the Deputy Registrar or any other official when acting as Registrar or representatives of States Parties, to leave the country on account of any activities performed by them which are an abuse of the right of residence in the host country and are not directly related to, or incidental to the performance of, official functions, with the approval of the Secretary of State for External Affairs of the Federal Republic of Germany, after consultation with the Registrar in the case of officials of the Tribunal, and the President of the Tribunal in the case of the other persons herein referred to. Representatives of States Parties other than agents, representing such States Parties in proceedings before the Tribunal may only be required to leave the country in accordance with the diplomatic procedure applicable to diplomatic agents accredited to the Federal Republic of Germany.

## Article 28

## Notification

In any case where this Agreement requires a notification by the Tribunal or by the President, such notification may be issued by the Acting President, in the absence of the President, or by any duly authorized official of the Tribunal, unless otherwise specified.

## Article 29

## Supplementary agreements

The Tribunal and the Government of the Federal Republic of Germany may conclude supplementary agreements to this Agreement so far as this is deemed desirable.

## Article 30

## Relationship between the Agreement and the Protocol

The provisions of this Agreement shall be complementary to the provisions of the Protocol. In so far as any provision of this Agreement and any provisions of the Protocol relate to the same subject-matter, the two provisions

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shall, wherever possible, be treated as complementary, so that both provisions shall be applicable and neither shall narrow the effect of the other; but in case of conflict, the provisions of this Agreement shall prevail.

## Article 31

## Settlement of disputes

1. The Tribunal shall make suitable provisions for the satisfactory settlement of:

(a) disputes arising out of contracts and disputes of a private law character to which the Tribunal is a party;

(b) disputes involving any person within the scope of article 27, paragraph 3, who by reason of his official position enjoys immunity, if immunity has not been waived in accordance with article 22.

2. Any dispute between the Tribunal and the competent authorities arising out of or concerning the interpretation or application of this Agreement or of any supplemental agreement, or any question affecting the Headquarters or the relationship between the Tribunal and the Government which is not settled by consultation, negotiation or other agreed mode of settlement, shall be referred, at the request of either party to the dispute, for a final and binding decision to a panel of three arbitrators, one to be chosen by the Tribunal, one to be chosen by the Government, and the third, who shall be the Chairman of the panel, to be chosen by the first two arbitrators. Should the first two arbitrators fail to agree upon the appointment of the third member within three months following the appointment of the first two arbitrators, the Chairman shall be chosen by the Secretary-General of the United Nations within one month of the request of the Tribunal or the Government. If either party to this Agreement has failed to make its appointment of an arbitrator within two months of the appointment of an arbitrator by the other party, the Secretary-General of the United Nations shall make such appointment within one month thereafter.

## Article 32

## Amendments

The provisions of this Agreement may only be amended by agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany.

## Article 33

## Entry into force

This Agreement shall enter into force, following its signature on behalf of the International Tribunal for the Law of the Sea and on behalf of the Federal Republic of Germany, thirty days after the Federal Republic of Germany has notified the President of the Tribunal that the internal constitutional requirements for the entry into force of this Agreement have been fulfilled.

DONE and signed at ___________ in duplicate, in the English, French and German languages, all language texts being equally authentic, on this ____ day of ______, 19___.

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# Annex

[Specifications as to site, buildings, etc.]

/...

LOS/PCN/SCN.4/WP.16/Add.3
14 October 1993

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY
AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 4

# PROVISIONAL REPORT OF SPECIAL COMMISSION 4

## (DRAFT REPORT OF THE PREPARATORY COMMISSION UNDER PARAGRAPH 10 OF RESOLUTION I CONTAINING RECOMMENDATIONS FOR SUBMISSION TO THE MEETING OF STATES PARTIES TO BE CONVENED IN ACCORDANCE WITH ANNEX VI, ARTICLE 4, OF THE CONVENTION REGARDING PRACTICAL ARRANGEMENTS FOR THE ESTABLISHMENT OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA)

## Addendum

(Final draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea)

(LOS/PCN/SCN.4/WP.6/Rev.2)

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## Explanatory note

1. The final draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea contained herein was prepared pursuant to the decision of Special Commission 4 (LOS/PCN/L.101, para. 5). It constitutes addendum 3 to document LOS/PCN/SCN.4/WP.15 (Draft Report of the Preparatory Commission under paragraph 10 of resolution I containing recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea), as referred to in the introductory note thereto, final paragraph. Pursuant to the decision of the Preparatory Commission, the Draft Report was reviewed and revised. The revision is titled "Provisional Report of Special Commission 4 (Draft Report of the Preparatory Commission under paragraph 10 of resolution I containing recommendations for submission to the Meeting of States Parties to be convened in accordance with Annex VI, article 4, of the Convention regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea)" (LOS/PCN/SCN.4/WP.16). The present paper constitutes Addendum 3 to LOS/PCN/SCN.4/WP.16, the Provisional Report of Special Commission 4.

2. The present working paper takes into account the deliberations of the Special Commission, commencing with its consideration of the draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.6), which was reviewed by the Special Commission during the seventh session (27 February-23 March 1989) and the 1989 summer meeting of the Preparatory Commission (14 August-1 September 1989). The discussions are reflected in the Chairman's summaries of discussions (LOS/PCN/SCN.4/L.13 and Add.1).

3. At the request of the Special Commission, the Secretariat prepared a revision of the draft in the light of the discussions, taking into account the matters on which there was agreement, the views expressed, the suggestions made by delegations, including drafting suggestions handed to the Secretariat, the texts proposed for specific provisions (LOS/PCN/SCN.4/1989/CRP.31 and 33-35) and the compromise texts to be provided by the Secretariat as requested in LOS/PCN/L.91, paragraph 10. The revised draft was issued as document LOS/PCN/SCN.4/WP.6/Rev.1 and Corr.1 and 2.

4. That revised draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea was reviewed at the ninth session (25 February-22 March 1991), at the 1991 summer meeting of the Preparatory Commission (12 to 30 August 1991) and at the tenth session (24 February-13 March 1992).

5. The present document incorporates the results of those discussions, and the agreements and understandings reached by the Special Commission and the draft texts proposed for specific provisions (LOS/PCN/SCN.4/1991/CRP.41-44). In the revision of the text, to the extent possible it has been harmonized with the final draft Headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany (LOS/PCN/SCN.4/WP.5/Rev.2).

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## FINAL DRAFT PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

(Adopted by the Meeting of States Parties to the United Nations Convention on the Law of the Sea)

**WHEREAS** the United Nations Convention on the Law of the Sea provides for the establishment of the International Tribunal for the Law of the Sea in accordance with article 287, paragraph 1 (a), and the Statute of the Tribunal in annex VI thereof and

**RECOGNIZING** that the Tribunal shall enjoy in the territory of each State Party such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes and

**RECOGNIZING ALSO** that the Tribunal shall enjoy in the territory of each State Party such privileges and immunities as are necessary for the fulfilment of its purposes and

**WHEREAS** the Statute of the Tribunal provides, in accordance with article 10 thereof, that the Members of the Tribunal, when engaged on the business of the Tribunal, shall enjoy diplomatic privileges and immunities and

**RECOGNIZING** that representatives of States Parties and of other parties to disputes or proceedings, officials and other functionaries of the Tribunal shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Tribunal;

**CONSEQUENTLY** the Meeting of States Parties to the Convention by a Resolution adopted on the ... approved the following Protocol and proposed it for accession by each State Party.

### Article 1

### Use of terms

For the purposes of this Protocol:

(a) "Convention" means the United Nations Convention on the Law of the Sea;

(b) "Statute" means the Statute of the International Tribunal for the Law of the Sea, annex VI of the Convention;

(c) "Rules" means the Rules of the International Tribunal for the Law of the Sea;

(d) "States Parties" means those States which have consented to be bound by the Protocol in accordance with article 24 thereof and for which the Convention is in force;

(e) "Tribunal" means the International Tribunal for the Law of the Sea;

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(f) "Authority" means the International Seabed Authority;

(g) "Parties to proceedings" means States Parties, other States, entities other than States, the Authority, natural and juridical persons and sponsoring States or entities substituted for parties to proceedings in accordance with article 190 of the Convention;

(h) "Authorities of a State Party" means such authorities in the country of the State Party as may be appropriate in the context and in accordance with the laws, regulations and customs of that country, including the laws, regulations and customs of the local authorities involved;

(i) "Member" means an elected member of the Tribunal as referred to in article 2 of the Statute and article 2 of the Rules;

(j) "Member ad hoc" means a person chosen under article 17 of the Statute for the purpose of a particular case;

(k) "officials of the Tribunal" means the Registrar and other members of the staff of the Registry;

(l) "expert" means a person called at the instance of a party to a dispute or at the instance of the Tribunal to present testimony in the form of expert opinions, based on his special knowledge, skills, experience or training;

(m) "expert appointed under article 289 of the Convention" means a person appointed in accordance with that article to sit with the Tribunal;

(n) "functionary of the Tribunal" means any person referred to in articles 13, 14, 15 and 16 of this Protocol;

(o) "Vienna Convention" means the Vienna Convention on Diplomatic Relations of 18 April 1961.

## Article 2

## Juridical personality of the Tribunal

The Tribunal shall possess juridical personality. It shall have the capacity:

(a) to contract;

(b) to acquire and dispose of immovable and movable property;

(c) to institute legal proceedings.

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## Article 3

## Inviolability of the premises of the Tribunal

The premises of the Tribunal shall be inviolable.

## Article 4

## Immunity of the Tribunal, its property, assets and funds

1. The Tribunal shall enjoy immunity from legal process, except in so far as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

2. The property, assets and funds of the Tribunal, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, seizure, expropriation or any other form of interference, whether by executive, administrative, judicial or legislative enforcement action.

3. The property and assets of the Tribunal shall be exempt from restrictions, regulations, controls and moratoria of any nature.

4. The immunities referred to in this article shall not extend to an action for damages arising from an accident involving a vehicle the use of which may have entailed the liability of the Tribunal to the extent that those damages are not recoverable from insurance. Pursuant to the laws and regulations of the host country, or the transit State, the Tribunal shall be required to have insurance coverage against third-party risks in respect of vehicles owned or operated by it.

## Article 5

## Archives

The archives and documents of the Tribunal shall be inviolable at all times and wherever they may be located.

## Article 6

## Exercise of the functions of the Tribunal outside the Headquarters

In the event that the Tribunal will sit and exercise its functions in accordance with article 1, paragraph 3, of the Statute:

(a) The State Party concerned shall provide the appropriate facilities in accordance with international practice, and upon request by the Tribunal the State Party shall, as soon as possible, conclude an arrangement with the Tribunal covering such matters;

(b) In the case where the State concerned is not a State Party, the Tribunal shall conclude with such State an arrangement concerning the provision of the appropriate facilities for the efficient exercise of its functions in accordance with international practice as well as the accord of privileges, immunities, facilities and prerogatives in accordance with this Protocol.

## Article 7

## Communications

1. For the purposes of its official communications, the Tribunal shall enjoy in the territory of each State Party treatment not less favourable than that which the State Party accords to any intergovernmental organization or diplomatic mission in the matter of priorities, rates and taxes applicable to mails and the various forms of communications.

2. The Tribunal may use all appropriate means of communications and make use of codes for its official communications. The States Parties shall not apply any censorship or any other form of interference of such communications.

3. The Tribunal shall have the right to dispatch and receive correspondence and other materials or communications by courier or in sealed bags, which shall have the same privileges and immunities as diplomatic couriers and bags.

## Article 8

## Exemption from taxes, customs duties and import or export restrictions

1. The Tribunal, its assets, income and other property, and its operations and transactions shall be exempt from all direct taxes; it is understood, however, that the Tribunal shall not claim exemption from taxes which are no more than charges for public utility services.

2. The Tribunal shall be exempt from all customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the Tribunal for its official use. Goods imported or purchased under such an exemption shall not be sold or otherwise disposed of in the territory of a State Party, except under conditions agreed with the Government of that State Party. The Tribunal shall also be exempt from all customs duties, prohibitions and restrictions on imports and exports in respect of its publications.

## Article 9

## Reimbursement of duties and/or taxes

The Tribunal shall not, as a general rule, claim exemption from duties and taxes which are included in the price of movable and immovable property and taxes paid for services rendered. Nevertheless, when the Tribunal for its official use makes major purchases of property and goods or services on which

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duties and taxes are charged or are chargeable, States Parties shall make appropriate administrative arrangements for the reimbursement of the amount of duty and/or tax paid.

## Article 10

## Taxation

1. The salaries and emoluments paid to Members, Members ad hoc and the Registrar of the Tribunal shall be exempt from taxation in accordance with article 18, paragraph 8, of the Statute. The salaries and emoluments paid to the other officials of the Tribunal shall also be exempt from taxation consistent with the established practice of the United Nations. 1/

2. Where the incidence of any form of taxation depends upon residence, periods during which such Members or officials are present in a State for the discharge of their functions shall not be considered as periods of residence.

3. The Parties to this Protocol shall not be obliged to exempt from income tax pensions or annuities paid to former Members and former officials of the Tribunal.

## Article 11

## Funds and freedom from currency restrictions

1. Without being restricted by financial controls, regulations or financial moratoria of any kind, whilst carrying out its activities:

(a) the Tribunal may hold funds or currency of any kind and operate accounts in any currency;

(b) the Tribunal shall be free to transfer its funds or currency from one country to another or within any country and to convert any currency held by it into any other currency;

(c) the Tribunal may receive, hold, negotiate, transfer, convert or otherwise deal with bonds and other financial securities.

2. In exercising its rights under paragraph 1, the Tribunal shall pay due regard to any representations made by the Government of any State Party in so far as it is considered that effect can be given to such representations without detriment to the interests of the Tribunal.

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1/ The Staff Regulations and Rules of the United Nations make provision for a staff assessment.

## Article 12

## Members and Members ad hoc of the Tribunal

1. Members of the Tribunal, while exercising their functions in the territory of each State Party, shall, pursuant to article 10 of the Statute, enjoy the privileges, immunities and facilities as are accorded to heads of diplomatic missions accredited to that country. Such treatment shall include the privileges, immunities, facilities and prerogatives accorded to diplomatic agents in accordance with the Vienna Convention and international law.

2. Members of the Tribunal and their spouses and dependent relatives forming part of their households, shall be accorded every facility for leaving the country where they may happen to be and for entering and leaving the country where the Tribunal is sitting. On journeys in connection with the exercise of their functions, they shall in all countries through which they may have to pass enjoy all the privileges, immunities and facilities granted by these countries to diplomatic agents.

3. Members of the Tribunal, when holding themselves at the disposal of the Tribunal for the exercise of their functions, their spouses and dependent relatives forming part of their household shall be accorded diplomatic privileges and immunities during the period of their residence in any country other than that of which they are nationals or permanent residents, provided that in their own country or in any country of which they are permanent residents they enjoy privileges, immunities and facilities to the extent admitted by such State. The States concerned, however, must exercise their jurisdiction over those persons in such a manner as not to interfere with the functions of the Tribunal.

4. In order to secure, for Members, complete freedom of speech and independence in the discharge of their functions, the immunity from legal process in respect of words spoken and written and all acts done by them in discharging their functions shall continue to be accorded, notwithstanding that the persons concerned are no longer Members of the Tribunal or performing those functions.

5. Members shall be given, together with their spouses and dependent relatives forming part of their household, the same repatriation facilities in time of international crises as diplomatic agents are given under the Vienna Convention and international law.

6. Privileges, immunities, facilities and prerogatives are accorded to the Members not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the Tribunal.

7. The provisions of paragraphs 1 and 2 shall be applicable irrespective of the relations existing between the Government of which such an individual is a national and the State Party concerned.

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8. This article shall apply to Members even after the expiry of their terms of office if they continue to exercise their functions, in accordance with article 5, paragraph 3, of the Statute. It shall also apply mutatis mutandis to Members ad hoc.

## Article 13

## Officials

1. Officials of the Tribunal shall enjoy in any country where they may be on the business of the Tribunal, or in any country through which they may pass on such business, such privileges, immunities and facilities for residence and travel as may be necessary for the independent exercise of their functions. They shall:

(a) be immune from any form of personal arrest, search or detention and from seizure of their personal baggage;

(b) be exempted from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles not for personal use or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the host country. An inspection in such a case shall be conducted in the presence of the official concerned;

(c) be immune from legal process in respect of words spoken or written and all acts performed by them while discharging their functions, which shall continue even after they have ceased to exercise their functions;

(d) be exempt from income tax on the salaries and emoluments paid to them by the Tribunal consistent with the established practice of the United Nations; 2/

(e) be immune from national service obligations;

(f) be exempted in respect of themselves and their spouses and dependent relatives forming part of their household from immigration restrictions or alien registration;

(g) be accorded the same privileges in respect of exchange facilities as are accorded to the officials of comparable rank forming part of diplomatic missions to the Government concerned in accordance with international law and practice;

(h) have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question and to re-export the same free of duty to their country of domicile;

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2/ The Staff Regulations and Rules of the United Nations make provision for a staff assessment.

/...

(i) be accorded, together with their spouses and dependent relatives forming part of their household, the same repatriation facilities in time of international crises as are accorded to diplomatic agents under the Vienna Convention and international law.

2. The Registrar and any official of the Tribunal, acting as Registrar, should, while on the business of the Tribunal, be accorded diplomatic privileges and immunities.

3. The Registrar shall specify the categories of officials to which the provisions of this article shall apply. He shall submit these categories to the Tribunal. These categories shall also be communicated to the Governments of all States Parties. The names of the officials included in these categories shall from time to time be communicated to the Governments of States Parties.

4. The provisions of paragraph 1 shall be applicable irrespective of the relations existing between the Government of which such an individual is a national and the State Party concerned.

## Article 14

## Experts appointed under article 289 of the Convention

1. Experts appointed under article 289 of the Convention shall be accorded, during the period of their missions, including the time spent on journeys in connection with their missions, such privileges and immunities as are necessary for the independent exercise of their functions. They shall be accorded:

(a) immunity from any form of personal arrest, search or detention and from seizure of their personal baggage;

(b) exemption from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles not for personal use or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the host country. An inspection in such a case shall be conducted in the presence of the expert concerned;

(c) immunity from legal process of any kind in respect of words spoken or written and acts done by them while discharging their functions, which immunity shall continue even after they have ceased to exercise their functions;

(d) inviolability of documents and papers;

(e) exemption with respect to themselves, their spouses and dependent relatives forming part of their household, from immigration restrictions or alien registration;

(f) the same facilities in respect of currency and exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions.

/...

2. Such experts shall be given, together with their spouses and dependent relatives forming part of their household, the same repatriation facilities in time of international crises as diplomatic agents are given under the Vienna Convention and international law.

## Article 15

## Agents representing parties, counsel and advocates designated to appear before the Tribunal

1. Agents representing parties to proceedings before the Tribunal as well as counsel and advocates designated to appear before it shall, without prejudice to paragraph 2, be accorded the privileges, immunities and facilities necessary for the independent exercise of their functions during their journey to and from the place where the Tribunal is sitting, and while exercising their functions. They shall be accorded:

(a) immunity from any form of personal arrest, search or detention and from seizure of their personal baggage;

(b) exemption from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles not for personal use or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the host country. An inspection in such a case shall be conducted in the presence of the agent, counsel or advocate concerned;

(c) immunity from legal process of every kind in respect of words spoken and written and all acts done by them while discharging their functions as representatives of parties before the Tribunal, which immunity shall continue even after they have ceased to exercise their functions;

(d) inviolability of documents and papers;

(e) the right to receive papers or correspondence by courier or in sealed bags;

(f) exemption in respect of themselves and their spouses from immigration restrictions or alien registration;

(g) the same facilities in respect of their personal baggage and in respect of currency or exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions;

(h) the same repatriation facilities in time of international crises as are accorded to diplomatic agents under the Vienna Convention and international law.

2. The representatives of State Parties who may be agents, counsel or advocates appearing before the Tribunal shall, notwithstanding anything to the contrary in paragraph 1, enjoy the privileges, immunities, facilities and

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prerogatives which, in accordance with the Vienna Convention and international law, are accorded to diplomatic agents.

3. The provisions of paragraphs 1 and 2 shall be applicable irrespective of the relations existing between the Government of which such an individual is a national and the country in which such individual is present.

4. Upon receipt of notification from parties to proceedings before the Tribunal as to the appointment of an agent, counsel or advocate, a certification of the status of such representative shall be provided under the signature of the Registrar and limited to a period reasonably required for the proceedings.

5. The competent authorities of the State concerned shall accord the privileges, immunities, facilities and prerogatives of agents, counsel and advocates provided in this article upon production of the certification referred to in paragraph 4.

6. Where the incidence of any form of taxation depends upon residence, periods during which such agents, counsel or advocates are present in a State for the discharge of their functions shall not be considered as periods of residence.

## Article 16

### Witnesses, experts and persons performing missions

1. Witnesses, experts and persons performing missions by order of the Tribunal shall be accorded, during the period of their mission, including the time spent on journeys in connection with their missions, the privileges, immunities and facilities necessary for the independent exercise of their functions. They shall be accorded the privileges, immunities and facilities accorded to experts appointed under article 289 of the Convention, as provided in article 14, paragraph 1, subparagraphs (a) to (f).

2. Witnesses, experts and such persons shall be provided with repatriation facilities in time of international crises.

## Article 17

### Respect for laws and regulations

Without prejudice to their privileges and immunities, it is the duty of all persons referred to in articles 12 to 16 to respect the laws and regulations of the State Party in whose territory they exercise official functions. They also have a duty not to interfere in the internal affairs of that State.

## Article 18

## Waiver

1. Privileges and immunities are accorded to persons referred in articles 13 to 16 not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the Tribunal.

2. A State Party not only has the right but is under a duty to waive the immunity of its representatives referred to in article 15, paragraph 2, in any case where in the opinion of the State the immunity would impede the course of justice and it can be waived without prejudice to the administration of justice by the Tribunal and the purpose for which the immunity is accorded.

3. The right and the duty to waive immunity of representatives of parties to proceedings before the Tribunal who may be agents, counsel or advocates appearing before the Tribunal and witnesses or experts appearing at the instance of such parties, other than diplomatic agents of a State Party, shall lie with the Tribunal, after considering the case of the individual concerned, by a unanimous decision of its available Members, and where, in its opinion, the immunity is not directly related to or incidental to the performance of official functions and would impede the course of justice and it can be waived without prejudice to the administration of justice by the Tribunal and the purpose for which the immunity is accorded. The Tribunal shall consult with the party that appointed such person or at whose instance the person appears before taking a decision.

4. The right and the duty to waive immunity of the Registrar or Deputy Registrar when acting as Registrar and of experts appointed under article 289 of the Convention, shall lie with the Tribunal, after considering the case of the individual concerned, by a unanimous decision of its available members, and where, in its opinion, the immunity is not directly related to or incidental to the performance of official functions and would impede the course of justice and it can be waived without prejudice to the administration of justice by the Tribunal and the purpose for which the immunity is accorded. In the case of agents, counsel or advocates referred to in this article, the Tribunal shall consult with the party appointing such person before taking a decision.

5. The right and the duty to waive immunity of witnesses appearing at the instance of, and experts and persons performing missions by order of the Tribunal, shall lie with the Tribunal, after considering the case of the individual concerned, by a unanimous decision of its available Members, and where, in its opinion, the immunity is not directly related to or incidental to the performance of official functions and would impede the course of justice and it can be waived without prejudice to the administration of justice by the Tribunal and the purpose for which the immunity is accorded.

6. The right and the duty to waive immunity of the Deputy Registrar or other officials of the Tribunal and members of their households, shall lie with the Registrar, with the President's approval and after considering the case of the individual concerned, and where, in the Registrar's opinion, the immunity is not directly related to or incidental to the performance of official functions and

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would impede the course of justice and it can be waived without prejudice to the administration of justice by the Tribunal and the purpose for which the immunity is accorded.

### Article 19

### Laissez-passer*

1. The Tribunal may issue laissez-passer to the Members and officials of the Tribunal. These laissez-passer shall be recognized and accepted as valid travel documents by the authorities of States Parties, taking into account the provisions of paragraph 2.

2. Applications for visas (where required) from the Members of the Tribunal and the Registrar shall be dealt with as speedily as possible. Applications from all other holders of laissez-passer issued by the Tribunal and from persons referred to in articles 14, 15 and 16, when accompanied by a certificate that they are travelling on the business of the Tribunal, shall be dealt with as speedily as possible.

### Article 20

### Freedom of movement

No administrative or other restrictions shall be imposed on the free movement of Members of the Tribunal, and other persons referred to in articles 12 to 16 of this Protocol, to and from the Headquarters of the Tribunal or the place where the Tribunal is sitting or exercising its functions.

### Article 21

### Maintenance of security and public order

1. If the State Party concerned considers it necessary to take, without prejudice to the independent and proper working of the Tribunal, precautions necessary for the security or for the maintenance of public order of the State Party in accordance with the norms of international law, it shall approach the Tribunal as rapidly as circumstances allow in order to determine by mutual agreement the measures necessary to protect the Tribunal.

2. The Tribunal shall cooperate with the Government of such State Party to avoid any prejudice to the security of the State Party resulting from its activities.

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* In the event that arrangements are entered into with the United Nations for the issuance of laissez-passer of the United Nations, the Tribunal may not need to issue its own laissez-passer.

## Article 22

## Cooperation with the authorities of States Parties

The Tribunal shall cooperate at all times with the appropriate authorities of States Parties to facilitate the execution of their laws, including the observance of security regulations, and to prevent any abuse in connection with the privileges, immunities and facilities mentioned in this Protocol.

## Article 23

## Settlement of disputes

1. The Tribunal shall make suitable provisions for the proper settlement of:

(a) disputes arising out of contracts and other disputes of a private law character to which the Tribunal is a party;

(b) disputes involving any functionary of the Tribunal who by reason of his official position enjoys immunity, if such immunity has not been waived in accordance with article 18, paragraphs 3 to 6.

2. All differences arising out of the interpretation or application of this Protocol shall be referred to an arbitral tribunal in accordance with the following procedure unless the parties have agreed to another mode of settlement. If a difference arises between the Tribunal on the one hand and a State Party on the other hand, which is not settled by consultation, negotiation or other agreed mode of settlement within three months following such a request by one of the parties to the difference, it shall at the request of either party be referred for final decision to a panel of three arbitrators: one to be chosen by the Tribunal, one to be chosen by the State Party, and the third, who shall be Chairman of the panel, to be chosen by the first two arbitrators. If either party has failed to make its appointment of an arbitrator within two months of the appointment of an arbitrator by the other Party, the Secretary-General of the United Nations shall make such appointment. Should the first two arbitrators fail to agree upon the appointment of the third member within three months following the appointment of the first two arbitrators, the Chairman shall be chosen by the Secretary-General of the United Nations upon the request of the Tribunal or the State Party.

## Article 24

## Final provisions

1. This Protocol is open to every State Party to the Convention for accession.

2. Where a dispute has been submitted to the Tribunal in accordance with its Statute, any State other than a State Party which is a party to the dispute may, ad hoc for the purposes and duration of the proceedings relating thereto, become a party to this Protocol by the deposit of its instrument of accession.

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3. Accession shall be effected by deposit of an instrument with the Secretary-General of the United Nations who shall promptly transmit a copy thereof to the Registrar of the Tribunal. This Protocol shall come into force as regards each State Party on the date of deposit of each instrument of accession, it being understood that the provisions of the Protocol as applicable to States Parties shall apply mutatis mutandis to such State.

4. The Secretary-General of the United Nations shall inform all States Parties of the deposit of each instrument of accession.

5. It is understood that, when an instrument of accession is deposited on behalf of any State Party, the State Party will be in a position under its own law to give effect to the terms of this Protocol.

6. This Protocol shall continue in force as between the Tribunal and every State Party which has deposited an instrument of accession for so long as that State Party remains a State Party to the Convention, or until a revised Protocol has been approved by a meeting of States Parties and that State Party has become a party to the revised Protocol.

7. The Registrar may conclude with any State Party or States Parties supplementary agreements adjusting the provisions of this Protocol so far as that State Party or those States Parties are concerned. These supplementary agreements shall in each case be subject to the approval of a meeting of States Parties to the Convention.

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LOS/PCN/SCN.4/WP.16/Add.4
10 December 1993

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEABED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 4

# PROVISIONAL REPORT OF SPECIAL COMMISSION 4

## (DRAFT REPORT OF THE PREPARATORY COMMISSION UNDER PARAGRAPH 10 OF RESOLUTION I CONTAINING RECOMMENDATIONS FOR SUBMISSION TO THE MEETING OF STATES PARTIES TO BE CONVENED IN ACCORDANCE WITH ANNEX VI, ARTICLE 4, OF THE CONVENTION, REGARDING PRACTICAL ARRANGEMENTS FOR THE ESTABLISHMENT OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA)

## Addendum*

## RELATIONSHIP ARRANGEMENTS BETWEEN THE UNITED NATIONS AND THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

(Final Draft Agreement on Cooperation and Relationships between the United Nations and the International Tribunal for the Law of the Sea)

(Working paper by the Secretariat)

### Explanatory Note

The draft Agreement on Cooperation and Relationships between the United Nations and the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.9), as well as the arrangements regarding the United Nations common system of salaries and benefits and participation in the United Nations Joint Staff Pension Fund (LOS/PCN/SCN.4/WP.9/Add.1) were reviewed by Special Commission 4 during the eighth session (5-30 March 1990) and the summer meeting of the Preparatory Commission (13-31 August 1990). The discussions are reflected in the Chairman's summary (LOS/PCN/SCN.4/L.15) and form the basis for the present revised draft.

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* This working paper also constitutes addendum 4 to document LOS/PCN/SCN.4/WP.15, which was not previously issued as a separate document.

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# FINAL DRAFT AGREEMENT ON COOPERATION AND RELATIONSHIPS BETWEEN THE UNITED NATIONS AND THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

## Preamble

The United Nations and the International Tribunal for the Law of the Sea,

Bearing in mind that the General Assembly of the United Nations in its resolution 3067 (XXVIII) of 16 November 1973 decided, inter alia, to convene the Third United Nations Conference on the Law of the Sea, which adopted the 1982 United Nations Convention on the Law of the Sea, hereinafter referred to as the Convention, which in accordance with article 287, paragraph 1 (a), and annex VI thereof established the International Tribunal for the Law of the Sea with a central role in the settlement of disputes thereunder,

Noting the role of the United Nations in the peaceful settlement of international disputes and also the responsibilities entrusted to the Secretary-General under article 319 and other provisions of the Convention,

Noting further the functional interrelationships established under the Convention between the United Nations, its principal organs and the competent specialized agencies, and on the other hand the International Tribunal for the Law of the Sea,

Desiring to make provision for an effective system of relationship to facilitate the discharge of the respective responsibilities of the United Nations and the International Tribunal for the Law of the Sea, particularly in the field of the law of the sea,

Taking into account, for this purpose, the provisions of the Charter of the United Nations, the Convention and the Statute of the International Tribunal for the Law of the Sea, annex VI thereto,

Have agreed as follows:

## Article 1

### Legal relationship and mutual recognition

1. The United Nations and the International Tribunal for the Law of the Sea (hereinafter referred to as the International Tribunal) respect each other's status and mandate, and on the basis of this Agreement and in conformity with the Convention and the Statute, the International Tribunal, as an independent judicial body, hereby establishes working relations with the United Nations.

2. The International Tribunal recognizes the responsibilities of the United Nations in accordance with the Charter in the fields of international peace and security and the resolution of international disputes.

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## Article 2 (3)*

### Cooperation and coordination

1. The United Nations and the International Tribunal, with a view to facilitating the effective attainment of their objectives and the coordination of their activities, will:

(a) Consult each other when appropriate and will cooperate on matters of mutual concern; and

(b) Pursue initiatives to avoid overlapping and duplication of activities as far as possible.

## Article 3 (4)

### Relations with the International Court of Justice

1. The International Tribunal agrees to furnish any information which may be requested by the International Court of Justice pursuant to Article 34, paragraph 2, of the Statute of the Court and the United Nations agrees to furnish any information requested of it or of the International Court of Justice by the International Tribunal pursuant to article 79 of the Rules of the Tribunal.**

2. The prompt and regular exchange of information concerning applications submitted in accordance with article 292 of the Convention shall be assured between the International Court of Justice and the International Tribunal.

## Article 4 (5)

### Relations with the Security Council

1. The International Tribunal and the Security Council agree, when appropriate, to communicate information which may be relevant to their activities and to facilitate the performance of their functions.

2. In providing for such cooperation due regard shall be paid to the provisions of article 298, paragraph 1 (c), of the Convention.

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* The numbers in parentheses indicate the place of the article in document WP.9.

** The reference is to the Draft Rules of the Tribunal contained in document LOS/PCN/SCN.4/WP.2/Rev.1.

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## Article 5 (6)

## Reciprocal representation

1. The Secretary-General of the United Nations or his representative may be invited to attend and to participate as appropriate, without a vote, in meetings of the Members of the International Tribunal and of its committees on matters of common interest, other than those related to the judicial functions of the International Tribunal.

2. The President of the International Tribunal or his representative may be invited to attend and to participate as appropriate, without a vote, in plenary meetings of the organs of the United Nations, and their subsidiary bodies when matters of interest to the International Tribunal are under discussion.

3. Written statements may be presented by the United Nations for distribution by the Registry to the members of the International Tribunal. Written statements may be presented to the United Nations for distribution by the Secretariat to all members of the appropriate organs of the United Nations.

## Article 6 (7)

## Exchange of information and documents

1. The United Nations and the International Tribunal shall, to the fullest extent practicable, and subject to paragraph 2, arrange for the regular exchange of current information and publications of mutual interest.

2. Nothing in this Agreement shall be construed to require either the United Nations or the International Tribunal to furnish any information the furnishing of which would, in its judgement, constitute a violation of the confidentiality of confidential information and proprietary material.

3. The International Tribunal shall:

(a) Periodically transmit to the United Nations information concerning developments relating to the Convention, including information regarding the jurisprudence of the International Tribunal; and

(b) Transmit to the United Nations, as appropriate, information and documentation relating to the pleadings, oral proceedings, judgements, orders, and other communications and documentation relating to applications in accordance with articles 290 and 292 of the Convention, including information concerning applications submitted to the International Tribunal for the purposes of the International Court of Justice, as referred to in article 3, paragraph 2, of this Agreement.

4. The United Nations shall:

(a) Periodically transmit to the International Tribunal information concerning developments relating to the Convention; and

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(b) Transmit to the International Tribunal information and communications received by it pursuant to the designation of the Secretary-General as the depositary of the Convention;

(c) Transmit to the International Tribunal information concerning applications submitted to the International Court of Justice under article 292 of the Convention.

5. The United Nations and the International Tribunal agree to strive for maximum cooperation, with a view to eliminating all undesirable duplication between them and promoting the most efficient use of their technical personnel in the collection, analysis, publication and dissemination of statistical information. They agree to combine their efforts to secure the greatest possible usefulness and utilization of statistical information and to minimize the burdens placed upon national Governments and other organizations from which such information may be collected.

## Article 7 (8)

## Reports to the United Nations

The International Tribunal shall, when appropriate, keep the United Nations informed of its activities by submitting special reports:

(a) To regular sessions of the General Assembly;

(b) To the Security Council, and notify the Council whenever, in connection with the activities of the International Tribunal, questions within the competence of the Security Council, in particular relating to the application of article 298, paragraph 1 (c), arise.

## Article 8 (9)

## Personnel arrangements*

1. The United Nations and the International Tribunal agree to develop as far as is practicable common personnel standards, methods and arrangements designed to avoid serious discrepancies in terms and conditions of employment, to avoid competition in recruitment of personnel, and to facilitate any mutually desirable interchange of personnel in order to obtain the maximum benefit from their services.

2. The United Nations and the International Tribunal agree to cooperate to the fullest extent possible in achieving these ends, and in particular they agree:

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* See also LOS/PCN/SCN.4/WP.9/Add.1.

/...

(a) To cooperate with the International Civil Service Commission, established for the purpose of contributing to the improvement of recruitment and related phases of personnel administration in all of the international organizations;

(b) To consult together concerning other matters relating to the employment of their officers and staff, including conditions of service, duration of appointments, classification, salary scales and allowances, retirement and pension rights and staff regulations and rules, with a view to securing as much uniformity in these matters as shall be found practicable;

(c) To cooperate in the interchange of personnel, when desirable, on a temporary or permanent basis, making due provision for the retention of seniority and pension rights;

(d) To cooperate in the establishment and operation of suitable machinery for the settlement of disputes arising in connection with the employment of personnel and related matters.

3. Accordingly, the United Nations and the International Tribunal undertake to consult together, from time to time concerning these matters, particularly the most efficient and harmonized use of facilities, staff and services and appropriate methods of avoiding the establishment and operation of competitive or overlapping facilities and services with a view to securing as much uniformity in these matters as possible.

4. The United Nations and the International Tribunal shall consult to establish the most equitable manner in which any special services or assistance furnished, on request, by the International Tribunal to the United Nations or by the United Nations to the International Tribunal shall be financed.

### Article 9 (10)

### Agenda items

The International Tribunal may propose items for consideration by the United Nations. In such cases, the International Tribunal shall notify the Secretary-General of the United Nations of the item or items concerned and the Secretary-General, in accordance with his authority, shall bring such item or items to the attention of the General Assembly or such other organ, as appropriate.

### Article 10 (13)

### Administrative cooperation

The United Nations and the International Tribunal recognize the desirability of cooperation in administrative matters of mutual interest. They shall consult to explore the possibility of continuing or establishing common facilities or services in specific areas, including the possibility of one organization providing such facilities or services to one or several other

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organizations, and establish the most equitable manner in which such facilities or services shall be financed.

### Article 11 (14)

### Laissez-passer

Members of the International Tribunal, the Registrar and other officials of the International Tribunal and the Registry shall be entitled to use the laissez-passer of the United Nations, in accordance with such terms as may be concluded between the Secretary-General of the United Nations and the Registrar of the International Tribunal, and such special arrangements as may be approved in the context of the Convention on the Privileges and Immunities of the United Nations.

### Article 12 (15)

### Budgetary and financial matters

1. The International Tribunal recognizes the desirability of establishing close budgetary and financial relationships with the United Nations in order that the administrative operations of the United Nations and the International Tribunal shall be carried out in the most efficient and economical manner possible, and that the maximum measure of coordination and uniformity with respect to these operations shall be secured.

2. The United Nations and the International Tribunal agree to cooperate to the fullest extent possible in achieving these ends.

3. The International Tribunal agrees to conform, as far as may be practicable and appropriate, to standard practices and forms recommended by the United Nations.

4. The following arrangements shall govern budgetary and financial relationships between the United Nations and the International Tribunal:

(a) The Registrar of the International Tribunal shall consult with the Secretary-General of the United Nations with a view to achieving consistency in the presentation of the budget of the International Tribunal with that of the United Nations;

(b) The International Tribunal, when it deems necessary, may transmit its draft budget or budgetary estimates to the United Nations and request recommendations thereon;

(c) At the request of the International Tribunal, the United Nations may undertake the collection of contributions from States Parties to the Convention which are also Members of the United Nations in accordance with such arrangements as may be defined by a later agreement between the United Nations and the International Tribunal;

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(d) The United Nations may, upon the request of the International Tribunal, provide advice on financial and fiscal questions of interest to the International Tribunal with a view to the provision of common services and the securing of uniformity in such matters.

### Article 13 (16)

### Financing of special services

1. In the event of either the International Tribunal or the United Nations being faced with the necessity of incurring substantial extra expense as a result of any request which the other party to the Agreement may make for special reports, studies or assistance in accordance with the provisions of this Agreement, consultations shall take place with a view to determining the most equitable manner in which such expense shall be borne.

2. Consultation between the United Nations and the International Tribunal shall similarly take place with a view to making such arrangements as may be found equitable for covering the costs of central administrative, technical or fiscal services or facilities or other special assistance provided by the United Nations.

### Article 14 (17)

### Liaison

1. The United Nations and the International Tribunal agree to the foregoing provisions in the belief that they will contribute to the maintenance of effective liaison between them. They affirm their intention of taking in agreement whatever measures may be necessary to this end.

2. The liaison arrangements provided for in this Agreement shall apply, as far as is appropriate, to the relations between the International Tribunal and the United Nations, including its offices away from Headquarters and regional offices.

### Article 15 (18)

### Implementation of the Agreement

The Secretary-General and the Registrar may enter into such supplementary arrangements for the implementation of this Agreement as may be found desirable in the light of the operating experience of the United Nations and the International Tribunal.

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## Article 16 (19)

## Revision and review

This Agreement shall be subject to revision by agreement between the United Nations and the International Tribunal and shall be reviewed not later than three years after the Agreement has come into force.

## Article 17

## Amendments

This Agreement may be amended by agreement between the United Nations and the International Tribunal. Any such amendment agreed upon shall enter into force on its approval by the General Assembly of the United Nations and by the Meeting of States Parties to the Convention.

## Article 18 (20)

## Entry into force

This Agreement shall come into force on its approval by the General Assembly of the United Nations and the Meeting of States Parties to the Convention.

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LOS/PCN/SCN.4/WP.16/Add.5
10 December 1993

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEABED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 4

# PROVISIONAL REPORT OF SPECIAL COMMISSION 4

## (DRAFT REPORT OF THE PREPARATORY COMMISSION UNDER PARAGRAPH 10 OF RESOLUTION I CONTAINING RECOMMENDATIONS FOR SUBMISSION TO THE MEETING OF STATES PARTIES TO BE CONVENED IN ACCORDANCE WITH ANNEX VI, ARTICLE 4, OF THE CONVENTION REGARDING PRACTICAL ARRANGEMENTS FOR THE ESTABLISHMENT OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA)

## Addendum*

## REPORT ON PRINCIPLES GOVERNING A RELATIONSHIP AGREEMENT BETWEEN THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA AND THE INTERNATIONAL SEABED AUTHORITY

(LOS/PCN/SCN.4/WP.10/Add.1)

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* This working paper also constitutes addendum 5 to document LOS/PCN/SCN.4/WP.15, which was not previously issued as a separate document.

## Introductory note

The principles governing a relationship arrangement between the International Tribunal for the Law of the Sea and the International Seabed Authority were considered by Special Commission 4 on the basis of the working paper prepared by the Secretariat contained in document LOS/PCN/SCN.4/WP.10. The deliberations of the Special Commission on the subject are reflected in the Chairman's summary of discussions, as contained in document LOS/PCN/SCN.4/L.17.

The Special Commission decided that there was no need to present the outcome of the deliberations in the form of a draft agreement on these issues since no conclusions had been reached on the working paper and since it would not be possible to cover every issue on which a relationship arrangement might have to be regulated. The Special Commission thus mandated the Secretariat to prepare a "Report on the principles governing a relationship arrangement between the International Tribunal for the Law of the Sea and the International Seabed Authority" taking into consideration the deliberations of the Special Commission. In this regard it was agreed to reflect, in a concise manner, only those matters which would provide a better perspective of the issues. The present working paper constitutes the response thereto.

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## Introduction

1. Special Commission 4 considered [1] a working paper entitled "Principles governing a relationship arrangement between the International Tribunal for the Law of the Sea and the International Seabed Authority", prepared by the Secretariat (LOS/PCN/SCN.4/WP.10). The Chairman's summary of discussions thereon is contained in document LOS/PCN/SCN.4/L.17.

2. The Special Commission took note that a relationship arrangement between the International Tribunal for the Law of the Sea and the International Seabed Authority should be considered in the context of precedents, primarily under Article 57 of the Charter of the United Nations, and other existing relationship arrangements. The Special Commission did not attempt to reach any conclusions, nor did it attempt to formulate texts. Instead, it examined the functions of the International Tribunal for the Law of the Sea (hereinafter referred to as "the Tribunal") and those of the International Seabed Authority (hereinafter referred to as "the Authority") in so far as they would be relevant to each other and to establishing a relationship between them. The Special Commission identified the type of issues that could be covered in a relationship agreement.

## A. General comments

3. The Commission considered whether there was a precedent for empowering two institutions created by the same convention to conclude a further agreement between themselves. While it was exceptional for a single convention to establish more than one international institution, several delegations felt that such an agreement could be concluded. However, one delegation doubted whether there was really a need. It was considered important to ensure that the independence of the Tribunal should be maintained and that its decision-making should not be influenced by any other institution. Yet there was a need to establish a link which would permit cooperation, since the Tribunal and the Authority were completely independent of each other. One view was that there was limited need for such cooperation since it should only relate to administrative matters. Mere reiteration of the Convention's provisions that require interaction between them should also be avoided, given that the Tribunal and the Authority had a common constitutive instrument.

## B. Specific comments

### Section I. Preamble

4. It was stressed in this context as well that the Tribunal and the Authority had common roots in the Convention. Therefore, the preamble should merely contain a reference to that effect. It was noted that the Tribunal should appropriately be referred to as a judicial body since it was not an

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[1] At its 124th and 125th meetings of the eighth session.

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international organization in the normal sense. The agreement therefore would not be one between two international organizations of a global character.

5. There should be an expression in the preamble of the desire to secure an effective relationship and thereby to facilitate the discharge of the responsibilities of each institution. It should also be noted that each organization, within its sphere of activity, would contribute to the objectives set out in the preamble to the Convention.

### Section II. Governing principles and mutual recognition of responsibilities, rights and obligations

6. In this context as well, it was felt that the Tribunal should be defined as a judicial "body" or "institution" and that there should, in the view of one delegation, be an elaboration of the capacity of the Tribunal to conclude agreements. Notwithstanding that since the Tribunal and the Authority have their powers defined under the same Convention, which creates them, it appears desirable for each to recognize the character and responsibilities of the other.

### Section III. Consultation, cooperation, coordination and recommendations

7. Consistent with the practice, it was understood that the arrangements should reflect the important need for the Tribunal and the Authority to consult and cooperate on matters of mutual interest. The cooperation extended by each institution to the other should extend not only to those matters on which clearly defined functions are allocated to each of them, but should also extend to a cooperative relationship whereby each could facilitate the activities of the other.

8. Bearing in mind that decisions of the Seabed Disputes Chamber in connection with cases of non-compliance are to be implemented by the Council, there is a need for cooperation and consultation. So also, in the process of the selection of the members of the Seabed Disputes Chamber from among the members of the Tribunal, the Assembly has to adopt recommendations of a general nature relating to the representation of the principal legal systems of the world and equitable geographic distribution that is to be assured. For this purpose as well, there would appear to be a need for consultation and cooperation between the Tribunal and the Authority in ensuring that the Assembly is possessed of all necessary information to adopt a recommendation which can be given effect by the Tribunal. The importance of such arrangements, which call for consultations between the two institutions, was underlined.

9. One view expressed was that cooperation should be confined to the cases where the Convention required it, and the Tribunal and the Authority could be left to work out the details of cooperation at a later stage.

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10. Since their activities are disparate in most respects, a relationship arrangement between the Tribunal and the Authority may not need to provide for coordination of activities as envisaged according to the usual practice of relationships between international organizations.

11. Some emphasis was placed on the fact that the Tribunal, as an independent judicial body, could pass judgement on the actions and activities of the Authority, and thus should not be influenced by the Authority. The essence of a relationship agreement then was that one institution could facilitate the activities of the other and arrangements were needed to make this feasible.

## Section IV. Exchange of information and documents

12. The Tribunal and the Authority could be expected to secure the regular exchange of current information of mutual interest. A free exchange of information was desirable and cooperation aimed at the exchange of information, for instance, was one of the natural areas of cooperation between these institutions. It would entail minimal financial implications. It was felt that if these institutions held back information from each other it could lead to problems.

13. It was acknowledged that there would be several situations where the exchange of information would facilitate the functioning of these organizations and where the interaction in their activities would give rise to the desirability of sharing of information. While the view was expressed that administrative regulations might not be required for the exchange of information and documents, it was understood that it may be in the interests of the Tribunal and Authority to do so. The Authority would ensure that the Tribunal is provided with necessary information and materials to deal with urgent situations, including especially those which threaten the environment. However, in one view, the exchange of information should be limited to administrative matters, and should not involve information regarding matters which are sub judice in respect of which the Tribunal may exercise its judicial functions and which could result in the Tribunal being influenced by the Authority.

14. While not opposed in principle to the exchange of information, one delegation could not conceive what type of information the Tribunal could present to the Authority. It was noted that the Authority was political in nature whilst the Tribunal was purely judicial and that the essential character of the two institutions should be maintained, while the independence of its members had to be preserved.

## Section V. Reports

15. The question of reports being submitted by one international body to another with which it has a relationship agreement, either mesomotu or on its own initiative, was considered in the context of the Tribunal and the Authority. Consideration was given to the possibility, for instance, that the Authority may wish to have a report on the basis of which it could review the jurisprudence of the Tribunal and particularly the Seabed Disputes Chamber, so as to minimize the

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likelihood of disputes arising as a result of factors within the control of the Authority and its organs. A counter view was that there was no need for the Tribunal to report to the Authority on its jurisprudence. While no clear need was seen for a separate treatment of reports, it was proposed that they be dealt with in context of the exchange of information and documents. Concern was expressed for the risk that reporting would impinge on the independence of the Tribunal.

16. Another view expressed was that the Tribunal should not furnish special reports to the Authority since it could leave the Registry overloaded with work.

### Section VI. Administrative cooperation and personnel arrangements

17. In the context of the administration and personnel management of the Registry of the Tribunal and the Secretariat of the Authority, it was generally considered desirable, with a few reservations, to have some measure of uniformity as regards terms and conditions of service, levels of appointment and retirement benefits for staff. This would be facilitated by cooperation.

18. In cases of alleged violations by staff members of their obligations to the Authority under article 168, paragraph 3, the Seabed Disputes Chamber was considered to be the appropriate forum for adjudication. It was certainly contemplated in the negotiations that the tribunal of choice should be the International Tribunal for the Law of the Sea. The United Nations Administrative Tribunal and the World Bank Administrative Tribunal would be excluded from consideration as their statutes did not give them the competence to deal with cases where States Parties may institute proceedings against staff as permitted under these provisions of the Convention. However, some had misgivings about the Tribunal acting as the court of first instance in disputes involving the Authority and its staff, though it could act in an appellate capacity. In either case it would open another area for cooperation and consultation.

### Section VII. Budgetary and financial arrangements

19. Some concern was expressed concerning the establishment of "close budgetary and financial relationships" between the Tribunal and the Authority since it could be interpreted to mean that the Authority and the Tribunal were financially dependent on each other. The very need for a close relationship was questioned and it was suggested that there should only be a provision on how contribution by the Authority to the Tribunal's budget would be made. In that connection, it was noted that a more effective mechanism than consultation was needed to determine the level and method of payment of the Authority's contribution to the Tribunal's budget.

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20. The position taken by one delegation was that while article 19, paragraph 1, of the Statute provided for the contribution to the costs of the Tribunal by the Authority, that relationship should not prejudice the independence of the Tribunal, e.g., the Authority should not be allowed to restrict its contributions to the Tribunal's budget when it was dissatisfied with the latter's judgements.

## Section VIII. General

21. Supporting the note at the end of the working paper (LOS/PCN/SCN.4/WP.10, para. 24) that "most of the instances cited ... could be brought under a single broad definition of cooperation, consultation and exchange of information", some delegations considered it unnecessary to carry out a detailed consideration of the issues as currently contained in the working paper.

22. Several categories of relationship activity were examined and identified for consideration as appropriate and for inclusion in an arrangement between the Tribunal and the Authority.

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LOS/PCN/SCN.4/WP.16/Add.6
15 October 1993

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY
AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 4

# PROVISIONAL REPORT OF SPECIAL COMMISSION 4

(DRAFT REPORT OF THE PREPARATORY COMMISSION UNDER PARAGRAPH 10 OF RESOLUTION I CONTAINING RECOMMENDATIONS FOR SUBMISSION TO THE MEETING OF STATES PARTIES TO BE CONVENED IN ACCORDANCE WITH ANNEX VI, ARTICLE 4, OF THE CONVENTION REGARDING PRACTICAL ARRANGEMENTS FOR THE ESTABLISHMENT OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA)

## Addendum

(Administrative arrangements, Structure and Financial Implications of the International Tribunal for the Law of the Sea)

(LOS/PCN/SCN.4/WP.8/Rev.1)

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## Introductory note

The final working paper on administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea (SCN.4/WP.8/Rev.1), contained herein, was prepared pursuant to the decision of Special Commission 4 (LOS/PCN/L.101, para. 4). It constitutes addendum 6 to document SCN.4/WP.15, Draft Report of the Preparatory Commission under paragraph 10 of resolution I containing recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea, as referred to in the introductory note thereto, first paragraph. Pursuant to the decision of the Preparatory Commission, the Draft Report was reveiwed and revised. The revision is titled "Provisional Report of Special Commission 4 (Draft Report of the Preparatory Commission under paragraph 10 of resolution I containing recommendations for submission to the Meeting of States Parties to be convened in accordance with Annex VI, article 4, of the Convention regarding practical arrangements for the establishment of the Internaitonal Tribunal for the Law of the Sea)" (LOS/PCN/SCN.4/WP.16). The present paper constitutes addendum 6 to LOS/PCN/SCN.4/WP.16, the Provisional Report of Special Commission 4.

The present working paper takes into account the deliberations of the Special Commission commencing with its consideration of SCN.4/WP.8, "Administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea", which was reviewed by the Special Commission during the summer meeting of the eighth session. The deliberations are reflected in the Chairman's summaries of discussions (SCN.4/L.14). It also takes into account the deliberations of the Special Commission in the consideration of SCN.4/WP.8/Add.1, "Supplementary cost estimates reflecting alternatives as to official working languages", and SCN.4/WP.8/Add.2, "A scheme to phase in the establishment of the International Tribunal for the Law of the Sea".

At the request of the Special Commission, the Secretariat has prepared the present document which incorporates the results of those discussions, taking into account the views expressed, the trends of the discussions and the suggestions made by delegations.

The present working paper synthesizes the contents of the previous working papers and presents, in a single draft, a survey of all the options examined by the Special Commission regarding the institutional structure, the alternative administrative arrangements and the consequential financial implications. These include alternatives as to the number of official working languages and alternative schemes for phasing in the Tribunal. The presentation would permit the necessary planning decisions to be made, bearing in mind that the estimates are indicative and for planning purposes.

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## I. DOCUMENTATION

1. The consideration of the administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea by the Special Commission was carried out on the basis of the following working papers: "Administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea" (SCN.4/WP.8); "Supplementary cost estimates reflecting alternatives as to official working languages" (SCN.4/WP.8/Add.1); and "A scheme to phase in the establishment of the International Tribunal for the Law of the Sea" (SCN.4/WP.8/Add.2); presented by the Secretariat. The Special Commission also had before it two reference papers comprising instructions to the Registry of the International Court of Justice; and a report on the functioning and practice of the International Court of Justice (Reference Papers 6 and 7 respectively).

## II. INSTITUTIONAL FRAMEWORK

2. The International Tribunal for the Law of the Sea, as the central judicial organ for the resolution of disputes under the 1982 United Nations Convention on the Law of the Sea, will function in accordance with its Statute (annex VI of the Convention) which forms an integral part of the Convention. 1/ The Tribunal is composed of 21 judges elected by a meeting of States Parties to the Convention for a period of nine years.

3. The Tribunal has jurisdiction over all disputes relating to the interpretation or application of the Convention with certain exceptions and limitations. As a composite part of the Tribunal, there is constituted within it a Seabed Disputes Chamber which has exclusive and compulsory jurisdiction, with some exceptions, over the settlement of disputes relating to the international seabed area and the interpretation or application of that Part of the Convention (Part XI). The Seabed Disputes Chamber also has advisory jurisdiction in relation to matters submitted to it by the International Seabed Authority.

4. The expenses of the Tribunal, in accordance with article 19 of its Statute, are to be borne by States Parties to the Convention and by the International Seabed Authority on such terms and in such a manner as decided at meetings of States Parties. When an entity other than a State Party or the International Seabed Authority is a party to a case submitted to the Tribunal, the Tribunal shall fix the amount which that party is to contribute towards the expenses of the Tribunal.

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1/ "Convention" means the 1982 United Nations Convention on the Law of the Sea.

"Statute" means the Statute of the International Tribunal for the Law of the Sea, annex VI of the Convention.

5. In matters concerning its administration, the Tribunal will apply articles 1 and 12 of its Statute and the relevant articles of the Rules of the Tribunal. 2/

6. Since the general procedures for the functioning of the Tribunal and its powers are on the lines of the Statute of the International Court of Justice and other international judicial tribunals, 3/ the administrative structure of the Tribunal would take special account of that precedent. The Tribunal is distinct from the International Court, and as an independent judicial body it has no direct link to any other international organization or body. It is independent of the International Seabed Authority and of the United Nations. Having a legal personality of its own, it also has the competence to conclude international agreements.

## III. THE SEAT AND BUILDINGS

7. The Seat of the Tribunal is to be established in the Free and Hanseatic City of Hamburg in the Federal Republic of Germany. This does not however preclude the Tribunal from sitting and exercising its functions elsewhere whenever it considers it desirable to do so (Statute, art. 1, paras. 2 and 3).

8. An agreement should be concluded between the Tribunal and the Government of the Federal Republic of Germany determining the conditions under which the Tribunal will use the premises. This agreement shall be approved by the meeting of States Parties to the Convention (convened in accordance with the Statute, art. 4, para. 4).

9. The Tribunal will occupy the premises built at the expense of the Government of the Federal Republic of Germany in the City of Hamburg, in the district of Altona in Nienstedten. The offer made by the Government of the Federal Republic of Germany, communicated by letter dated 9 February 1987 (LOS/PCN/80) stated that the Federal Republic would erect the office building for the International Tribunal for the Law of the Sea at its own expense and make it available in accordance with the international practices that have evolved in connection with the provision of premises for United Nations bodies. This was elaborated by the German Government which stated that with regard to the transfer of the building and its premises to the Tribunal it intended to follow the practice in the headquarters agreements between the Government of Austria and the United Nations and its specialized agencies at Vienna. Rent for the premises would be of a purely symbolic or nominal nature and thus there would not be any financial implications in this regard.

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2/ The "Rules" means the draft Rules of the Tribunal.

3/ *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. V (United Nations publication, Sales No. 76.V.8), document A/CONF.62/WP.9/Add.1, p. 122, at p. 124, para. 30.

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10. In determining the building requirements for the Tribunal, the Special Commission had before it the report presented by the delegation of Germany. 4/ The report recorded that the proposed Staffing and Accommodation Plan had been reviewed in collaboration with the United Nations officials concerned, following a meeting with the Secretariat in March 1988.

11. In keeping the Preparatory Commission abreast of developments, information was provided periodically on the specifications and progress of planning for the building. When the delegation informed the Preparatory Commission that it would construct the building for the Tribunal at its own expense and make it available to the Tribunal, the offer included the installation of several interpreters' booths and technicians' booths in the Main Court Room and two interpreters' booths together with one technician's booth in each of the two hearings chambers. The offer also included the equipment and the technical accessories required in this connection. It was supplemented by an undertaking that, pending the construction of the Tribunal buildings, if interim facilities are required, an appropriate building would be provided by the Government (SCN.4/L.8).

12. An international architectural competition for the construction and design of the building to house the International Tribunal in Hamburg was organized by the Federal Government in 1989. Twenty national and international architects were invited to submit designs taking account, inter alia, of accommodation and staffing plans for the Tribunal. Estimates and assumptions as to the requisite space and facilities for the building were drawn up by the relevant government authorities in consultations with the United Nations Secretariat. Inter alia, the requirements were assessed on the basis that the Tribunal would have two official working languages.

13. The architectural competition specifications were for the development of a building where the design characteristics should have outstanding internal and external architectural features suitable to make the International Tribunal for the Law of the Sea an ideal setting for international litigation. An international jury established for this purpose met in 1989 and awarded the prize to an architectural firm from Munich, Architects Baron Alexander and Baroness Emanuela von Branca. A model of the design was presented in Germany and at the United Nations Headquarters in New York. Following the award, the architects provided a revised design in May 1990. The competition proceedings and results were documented in a brochure presented by the German delegation to the eighth session of the Preparatory Commission.

14. The further steps taken in finalizing the design and in the planning process were recorded in a document and revised brochure (SCN.4/L.16 and Add.1 respectively) 5/ which were subsequently distributed as documents to the Preparatory Commission.

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4/ SCN.4/1991/CRP.40, Report on the progress of work dated 13 March 1991 concerning the building requirements and facilities for the International Tribunal for the Law of the Sea in Hamburg; Statement of the Parliamentary State-Secretary, H.E. Mr. Rainer Funke, Ministry of Justice of the Federal Republic of Germany.

5/ Refer LOS/PCN/L.107, para. 7.

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15. The selected architects have submitted more detailed drafts for the construction of the building. On this basis a budgetary proposal has been formulated by the competent German authorities (the Federal Ministry of Justice, the Federal Ministry for Regional Planning, Building and Urban Development, the Finance Authorities of Hamburg) and the architects. This budgetary document is based on a revised and approved accommodation plan which designates 5,720.6 square metres of floor space, representing an increase of 1,338 square metres over the plan submitted in 1988. In elaborating the requirements for the building and equipment needs of the Tribunal, including facilities and furnishings to be provided by the host country, it was noted that this would include the equipment for heating, lighting, telephones, telefax, interpreters' booths, sanitary and electronic installations and ventilation equipment for special rooms. Storage, filing and cloakroom facilities in the relevant offices and basic furniture such as desks, filing equipment, trolleys, reception tables, soft furnishings, chairs, furniture for sittings and meeting rooms, archive and library shelving and equipment for the restaurant area are contemplated as coming within the furnished facility to be provided. 6/

16. The Special Commission at its tenth session in Kingston on 11 March 1992 took note of and approved the report together with the specifications for the building as provided in document SCN.4/L.16 and more fully set out in the annex thereto - a brochure (SCN.4/L.16/Add.1), 7/ which should be taken note of by the Meeting of States Parties.

## IV. STRUCTURE AND ADMINISTRATIVE ORGANIZATION

17. In determining the needs of the administrative organization of the Tribunal, the Special Commission evaluated the requirements as to the judiciary and associated Experts, the internal structure and staffing of the future Tribunal and the level of services to carry out its judicial functions.

18. For the purpose of determining the level of activity and the consequential level of services and cost estimates (based on 1990 costs), it is assumed that the annual workload of the Tribunal will comprise five to six contentious cases and four to six applications such as those for provisional measures or the prompt release of vessels and crews. These estimates are based also on the assumption that the Tribunal will have no more than two official working languages.

### A. The judiciary - institutional framework

19. The Convention establishes a Tribunal with 21 independent Members who should have the requisite qualifications and competencies. 8/ The Convention

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6/ This is not contemplated as including the residential premises intended for occupation by the President of the Tribunal and/or the Caretaker's accommodation. Refer letter dated 9 February 1987 (LOS/PCN/80).

7/ Refer LOS/PCN/L.107, para. 7.

8/ Annex VI, art. 2, para. 1.

also requires the representation of the principal legal systems of the world and equitable geographic distribution in the constitution of the Tribunal as a whole. 9/ It further specifies that no less than three Members should be from each geographic group established by the General Assembly of the United Nations. 10/

20. The Statute further requires that all available Members of the Tribunal shall sit and that a quorum of 11 elected Members shall be required to constitute the Tribunal. The determination as to which Members are available to constitute the Tribunal for a particular dispute is to be made by the Tribunal itself, 11/ subject to the nationality requirements. 12/ If the parties request, the disputes or application would be heard and determined by a chamber; otherwise it would be submitted to the Tribunal. 13/ Disputes relating to the international seabed area and submitted in accordance with Part XI of the Convention would be submitted to the Seabed Disputes Chamber.

21. The Seabed Disputes Chamber comprises 11 Members of the Tribunal selected by it from among the 21 Members. It can establish ad hoc chambers of three Members. 14/ The membership of the special chambers of the Tribunal, which include the Chamber of Summary Procedure with five Members, 15/ and the standing special chambers with three or more Members for dealing with particular categories of disputes, could overlap, since there is no restriction. Such would be the case also in constituting ad hoc chambers of the Tribunal, assuming that they were composed of no more than five members. 16/ Their composition is decided on by the Tribunal with the approval of the parties to the dispute.

22. The requirements set out in paragraphs 19 to 21 above are the primary requirements of the Convention. They provide the institutional framework for the judiciary of the Tribunal when exercising its contentious or advisory jurisdiction.

23. Given the provisions of the Statute concerning the election of Members, it is necessary to fulfil the requirement that all 21 Judges be elected at the initial election. This is in compliance with the letter of the Statute. 17/

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9/ Ibid., para. 2.

10/ Ibid., art. 3, para. 2.

11/ Ibid., art. 13, para. 2.

12/ Ibid., art. 17.

13/ Ibid., art. 15, paras. 3 and 4.

14/ Ibid., art. 35 and art. 36, para. 1.

15/ Ibid., art. 15, para. 3.

16/ Ibid., art. 15, para. 2.

17/ Ibid., art. 2.

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The stipulations therein as to geographic distribution and representation of the principal legal systems has also to be fulfilled.

## B. The Presidency and committees of the Tribunal

24. The President would preside over all meetings of the Tribunal and would direct the work and supervise the administration of the Tribunal. The President will reside at the Seat of the Tribunal (Statute, art. 12, para. 3).

25. In determining the requirements for the internal administration, the existing practice and the most appropriate precedent, particularly that of the International Court of Justice, was evaluated. Following that experience, consideration was given to the establishment of several committees, such as a Rules Committee, a Budgetary and Administrative Committee, a Committee on Relations and Public Information, a Library and Archives Committee and a Staff Appeals Committee. 18/ While there is a need for committees, the Special Commission is of the view that excessive specification should not be given in establishing a plurality of committees at this stage. There is an important need for a Budgetary and Administrative Committee and for a Staff Appeals Committee. Administrative matters could be prepared by the Budgetary and Administrative Committee for decisions by the Tribunal. The establishment of other committees is a matter within the discretion of the Tribunal and should be left to it to determine and to establish as appropriate.

## C. The Registrar and the Registry

26. The Registry is the administrative organ of the Tribunal. It will provide legal, procedural, administrative, diplomatic and any technical support for the Tribunal. It will also have responsibility for the financial and accounting administration, and for documentation archiving and library services. The role of the Registry is defined in the Rules of the Tribunal. The organization of the Registry and the appointment of staff is to be approved by the Tribunal on the recommendation of the Registrar.

27. The Registrar and such other officers as considered necessary are to be appointed by the Tribunal in accordance with article 12 of its Statute. The Registrar is to be elected by the Members of the Tribunal from among candidates proposed by Members. He/she is to be elected for a term of seven years (Statute, art. 12, para. 2). The Registrar will reside at the Seat of the Tribunal (Statute, art. 12. para. 3).

28. The Registrar would be responsible for all departments of the Registry. The staff of the Registry will be under his control and he/she alone should be authorized to direct the work of the Registry, of which he/she is the Head. The general functions of the Registrar would be defined by the Rules. In addition to these functions, the Registrar is to be responsible for the preparation of cases for consideration by the Tribunal and would assist the Tribunal in drafting the texts of judgments, decisions, orders and advisory opinions. The Commission noted that while the Registry should be under the control of the

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18/ Refer SCN.4/WP.8, p. 7, paras. 10-16.

Registrar, who alone would be authorized to direct the work of the Registry, he/she would exercise these functions under the authority of the Tribunal itself. 19/

29. The Registrar is required to prepare a document of "Instructions for the Registry" for approval by the Tribunal. These instructions will set out: (a) the duties of the Registrar and of the Deputy Registrar in general; (b) the general and financial administration of the Tribunal; (c) the duties of the other members of staff, including the organization of the various departments of the Registry.

30. The Deputy Registrar will share the duties devolving upon the Registrar both in connection with the exercise of the judicial and advisory powers of the Tribunal and in connection with the direction of the Registry. The Registrar should make sure that in dividing the work between himself and the Deputy Registrar both of them are constantly in touch with the work of the Tribunal and the Registry.

31. The position of Assistant Registrar may be created and an election held to make the appointment, if and when considered necessary. 20/ The Assistant Registrar could execute the duties devolving upon the Registrar both in connection with the exercise of the judicial and advisory powers of the Seabed Disputes Chamber and with the administration of the function of the Registry.

### 1. Officials of the Registry

32. The officials of the Registry are to be appointed by the Tribunal on proposals submitted by the Registrar (Statute, art. 12, para. 2). General Service category and temporary staff would be appointed by the Registrar in accordance with the Staff Regulations and Instructions for the Registry.

33. The Staff Regulations to be drawn up by the Registrar and approved by the Tribunal will embody the fundamental conditions of service and principles of personnel policy of the Registry. The Registrar will provide and enforce staff rules consistent with these principles. All officials of the Registry, whether permanent or temporary, should be proficient in at least one of the official languages of the Tribunal, it being desirable that they have a working knowledge of the other.

34. For the purposes of the establishment of the Tribunal, consistent with the practice of similar institutions and the membership and functions of the Tribunal, the alternatives for staffing structure were presented in organizational charts and in the tables of post requirements provided in annexes IA, IB, IC, II, IVA, IVB, IVC and V.

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19/ SCN.4/L.14.

20/ Refer SCN.4/L.14.

## 2. Secretaries

35. Secretaries of the Tribunal would be appointed from amongst the staff of the Registry. The Registrar would delegate to each Secretary such work as he/she thinks fit. The responsibilities would include, inter alia, legal research, legal review and advice on substantive and procedural issues, in the preparation of cases, in the drafting and translation of judgments, decisions, orders and advisory opinions; interpretation at the sittings of the Tribunal; minutes-writing, preparation of publications, maintaining relations with other organizations and external relations. The Secretaries would also provide support services for the Members of the Tribunal, including Ad Hoc Members. They would fulfil the research needs of the 21 Members. By combining the functions of the Judiciary Support Services with those of the Secretaries of the Legal Division (see annex IA), the structure of the Registry is simplified and a separate Judiciary Support Service would not be required. However, this should in no way restrict the right of Members of the Tribunal to have direct access to legal research assistance without going through the Registrar, as an intermediary, notwithstanding that the Secretaries would be in his/her charge.

36. The requirements in this regard for a functional and active initial establishment 21/ could be assessed as follows: the Secretaries of the joint Legal Department and Judiciary Support Service would include a Principal Legal Secretary (D-1 level) and one Senior Secretary (P-5 level). In addition, there would be five First Secretaries (P-4 level); two Secretaries (P-3 level) and seven Associate Secretaries/Researchers/Legal Assistants (P-2 level). Support for the functions of the Secretaries would require 17 General Service staff (secretarial). The Judiciary Support Service, it is assumed, would be headed by one of the First Secretaries (P-4 level) and would include six of the Associate Secretaries/Researchers/Legal Assistants (P-2 level) supported by 10 of the General Service secretaries.

## 3. Executive Officer

37. The Executive Officer would be responsible to the Registrar for all administrative, personnel, budgetary and financial activities of the Tribunal. The Executive Officer would function as Secretary of the Budgetary and Administrative Committee. The administrative procedures to be followed in the fulfilment of these functions, including the financial functions by the Accountant-Establishment Officer, would be laid down by the Registrar and included in the Instructions for the Registry.

38. The requirements in this regard for a functional and active initial establishment 22/ could be assessed as follows: An Executive Officer (D-1 level) would be in overall charge of administration. Falling under the Executive Officer would be a Budget and Accounts Section as detailed below. An Administration and Personnel Section will consist of an Administrative Officer (P-3 level) and five Administrative Assistants (General Service level). The General Service Section would also fall under the same supervision and would

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21/ Refer para. 18 above.

22/ Refer para. 18 above.

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comprise a Coordinator (P-3 level), two telephone operators/receptionists (General Service level) and five messengers (General Service level). There would also be two Security Guards (Security Service level).

### 4. Budget and Accounts Section

39. An Accountant/Establishment Officer would head this Section and would be responsible to the Executive Officer for accounts, payments, purchases of equipment and supplies and the maintenance of all accounting ledgers and books. The Registrar would ensure that the strictest economy is observed in incurring liabilities and that no payment is made except where an obligation actually exists. This section will also service the Budgetary and Administrative Committee.

40. The requirements in this regard for a functional and active initial establishment could be assessed as follows: The Budget and Accounts Section is assumed to comprise the Accountant/Establishment Officer (P-5 level), a Budget Officer (P-2 level) and three Accounts/Budget Clerks (General Service level).

### 5. Documents Department

41. The Head of the Documents Department would also be the Tribunal's Librarian, who would be responsible to the Registrar. He/she would provide the Members of the Tribunal, the Registrar and members of staff with any information which they may require in the course of their work and would obtain for them any reference documents they may need, from the volumes of the Tribunal's library and any other library in Hamburg as well as the libraries of other international courts or tribunals, and if necessary from other libraries.

42. The Head of the Documents Department would keep the Registrar regularly informed of newly published works purchased by the Tribunal and draw his attention to books and review articles concerning the Tribunal and international law, in particular the law of the sea, and other relevant fields of marine affairs. Detailed instructions as to the duties of the Head of the Documents Department would be laid down in the instructions for the Registry and further defined by the Registrar.

43. The requirements in this regard for a functional and active initial establishment could be assessed as follows: The Documents Department would comprise the Head of the Department and Librarian (P-4 level) and one Associate Librarian/Documents Officer (P-2 level), together with one General Service Library Assistant.

### 6. Office Secretarial Services

44. The Registrar would appoint a Head of the Department of Office Secretarial Services to provide shorthand, typing, word-processing and other automated office services. The Head of the Department will be in charge of the clerical work necessary for preparing and reproducing documents, including correspondence and shorthand notes of hearings of the Tribunal and the Seabed Disputes Chamber,

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with the assistance of verbatim reporters, shorthand typists and automated officer services staff.

45. This Office would also be in charge of the indexing. It would maintain manual or computerized indexes of the minutes of the meetings of the Tribunal and of the Seabed Disputes Chamber; the Tribunal's publications; and certain special indexes; and as required provide research in the Minutes of the Meetings of the Tribunal and of the Seabed Disputes Chamber.

46. The requirements in this regard for a functional and active initial establishment could be assessed as follows: The Office Secretarial Services will be headed by a P-4 level staff member and will have a supervisor (P-2 level) and five secretarial support staff (General Service).

## 7. Printing Department

47. The Printing Department would be headed by a staff member appointed by the Registrar who is to be responsible for the preparation and examination of the Tribunal's publications and all other functions relating to printing. These duties would also relate to pleadings which the Registrar causes to be printed at the cost of the parties.

48. In general, the Head of the Printing Department would act as an intermediary between the Registry and the Printers. He/she would take all measures to maintain and increase the circulation of the Tribunal's publications.

49. The requirements for a functional and active initial Printing Department could be assessed as a P-2 level head of department with one General Service support staff member.

## 8. Archives and Distribution Service

50. An archivist is to be appointed who will be responsible to the Registrar for the keeping of the archives and for the dispatch and distribution of documents in accordance with the procedure to be laid down by the Registrar. This procedure would be contained in the Instructions to the Registry.

51. The requirements in this regard for a functional and active initial establishment could be headed by a Professional officer (P-3 level) with a support staff of four General Service personnel.

## 9. Linguistic Services

52. The Linguistic Services would be provided under the supervision of the Registrar and would have the responsibility to ensure the translation of the documentation into the official languages of the Tribunal as necessary. This would not include interpretation services which will be provided on a temporary basis as needed.

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53. This assumes that in its day-to-day services the Linguistic Services would ensure the functioning of the Tribunal in two official languages. Unofficial translation of the pleadings in six languages and judgments to be provided in the other four official languages of the United Nations after completion of each application, case or advisory opinion would be done by temporary staff.

54. The requirements in this regard for a functional and active initial establishment could be assessed as comprising two Revisers/Translators in the two languages (P-4 level) and two Translators in the two languages (P-3 level). The clerical requirements will be provided by the Office Secretarial Services.

## V. FINANCIAL IMPLICATIONS

55. For a functional and active initial establishment, the staffing structure has been assessed on the basis of experience of other international courts and tribunals, primarily that of the International Court of Justice, taking into account that the Tribunal has 21 Members and that it also has a Seabed Disputes Chamber. Additionally, the Tribunal also has jurisdiction to deal with such matters as the prompt release of vessels and crews and provisional measures. Access to the Seabed Disputes Chamber by entities other than States is a further factor that has been taken into account.

56. For the purpose of determining the level of services and consequential cost estimates, it is assumed that the annual workload of the Tribunal will comprise five to six contentious cases and four to six applications such as those for provisional measures or the prompt release of vessels and crews. 23/ These estimates are based also on the assumption that the Tribunal will have no more than two official working languages.

57. The overall financial implications may be conveniently divided under two headings. The first relates to the remuneration of Members, Members Ad Hoc and Experts (including pension and other costs), while the second comprises the administrative costs of the Registry and the services provided by it.

### A. Members and Experts under article 289 of the Convention

#### 1. Remuneration of Members

58. The Statute provides that Members shall be paid an annual allowance and a special allowance for each day they exercise their functions. The amount of special allowance cannot exceed the amount of the annual allowance. 24/ In assessing the total annual remuneration to be paid to Members it was considered appropriate to be consistent with the practice and level of remuneration of Judges of the International Court of Justice and other international tribunals and that the total annual remuneration should not exceed $100,000. 25/

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23/ See para. 21 above.

24/ Statute, art. 18, para. 1.

25/ Based on 1990 costs and levels of remuneration.

59. Of this $100,000, $60,000 could be regarded as an annual allowance and the remaining $40,000 would constitute the maximum special allowance, assuming that a Member of the Tribunal exercises his functions for 100 working days. For each working day, the daily rate of special allowance is thus $400.

60. Members of the Tribunal would have to work at least 100 working days to receive the maximum special allowance. The amount of $60,000, as a fixed annual allowance and the maximum $40,000 special allowance would be based on the assumption that 86 per cent of each of these is the base allowance and the remaining 14 per cent is a cost-of-living allowance which would be adjusted according to the cost-of-living index at the duty station.

61. The President of the Tribunal would receive an additional $15,000 per year as a special allowance bearing in mind his position and the requirement that he/she reside at the Seat of the Tribunal and be available on a full-time basis. He/she would therefore be entitled to the annual and special allowances.

62. The Vice-President of the Tribunal is entitled to a special allowance when he/she acts for the President, and this is computed on the basis of $100 per day for a maximum of 100 days. The maximum allowance therefore would be $10,000.

63. For the purposes of the estimates, the retirement benefits of the Members will be based on the annual base remuneration on the assumption that the contribution will only be made by the Tribunal. The contribution by the Tribunal is assumed to be the same percentage as contributed by the United Nations for its staff. For the purposes of this computation, the average annual remuneration of a Member is estimated as the full amount of the annual allowance and 50 per cent of the maximum special daily allowance.

64. Remuneration levels are to be reviewed and revised periodically by meetings of States Parties on the basis of the workload of the Tribunal (Statute, art. 18, para. 5, see also footnote 2 above).

### 2. Installation, travel, etc.

65. The estimated requirements for the travel of non-resident judges to attend sessions of the Tribunal have been assumed at two journeys per annum, and at one journey every second year for those who reside at the seat of the Tribunal.

66. Official travel requirements would be provided to permit the President to attend meetings of the International Seabed Authority as well as travel and subsistence for travel of Members on other official business of the Tribunal.

### 3. Members Ad Hoc and Experts appointed under article 289 of the Convention

67. Article 17 of the Statute provides for Members Ad Hoc to be treated on the same basis as Members. Although they do not receive an annual allowance, they would receive a special allowance for each day on which they exercise their functions (Statute, art. 18, para. 4). For the purpose of computation, this has been set at the same level as that paid to the Members at $400 per day for each

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day they make themselves available for the work of the Tribunal. The same rate of allowances has been applied to experts appointed under article 289 of the Convention who sit with the Tribunal.

### B. The Registry

68. The establishment for the Registry has been based on an initial establishment consistent with the size and functions corresponding to those of other international courts, in particular, the International Court of Justice. Allowance has been made for the fact that the Registry of the Tribunal would not have the support services enjoyed by the Registry of the International Court, which is an organ of the United Nations. In addition, it has been taken into account that the membership of the Tribunal is substantially larger than that of the International Court. Whenever the workload of the Tribunal increases substantially beyond the level assumed for the purposes of these estimates (see para. 55 above), additional temporary assistance services would be required.

69. The initial establishment of the Tribunal would be composed as indicated in annex II (column for two languages), comprising a Registrar at the Assistant Secretary-General level and a Deputy Registrar at the Director level. The 31 Professional posts and their designations are also contained in annex II. Forty-five General Service posts are also proposed for the purposes of the initial establishment.

70. Temporary assistance for meetings is primarily intended for language and secretarial services that cannot be performed by regular staff. This would include the funds required for recruitment and travel of freelance interpreters, translators and steno-typists required for documentation of the Tribunal prior to and during the servicing of meetings and public hearings.

71. General temporary assistance is intended to provide General Service level support services such as those of additional secretaries, messengers, library assistants and telephone operators.

72. Overtime requirements are intended to cover secretarial assistance to Members and Members Ad Hoc and for regular staff during peak workload periods.

73. A provision for official travel of staff is based on requirements for staff travel for official purposes.

74. A composite budgetary statement of the overall annual recurrent financial implications is contained in annex III (column for two languages).

## VI. PHASING IN THE ESTABLISHMENT OF THE TRIBUNAL

### A. Financial constraints

75. Widespread concern prevails for the achievement of maximum economy in the establishment and initial functioning of the Tribunal. This, notwithstanding the importance attached to the maintenance of the highest possible level of efficiency and the absolute independence and integrity of the Tribunal as a

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judicial body. Consistent with the concern regarding the costs of the Tribunal was the general understanding that the Tribunal should begin its work on a reduced scale with a view to gradually increasing its size in parallel with its increasing workload. This proceeds from the assumption that deep seabed mining is not likely to commence until many years after the establishment of the Tribunal. 26/

76. It is also understood that in the first few years after entry into force of the Convention there might not be many more than 60 Parties that have ratified it. Yet, the stipulated number of Members (judges) of the Tribunal should not at any stage of its existence be reduced from the number specified in the Convention. It should always be composed of the full complement of 21 Members. 27/ This requirement is significant in ensuring appropriate geographical distribution among the Members of the Tribunal and the representation of the principal legal systems.

## B. Financial and budgetary controls

77. An effective control mechanism for regulating the finances and budget of the Tribunal should be created, which should in no way affect its independence while ensuring that it would be as cost-effective as possible. The view was broadly shared that there should be continuous control over the spending of the Tribunal. No final conclusion can now be reached as to the nature of such mechanism or its precise constitution. While proposals were made to utilize the pre-existing financial review bodies such as that of the United Nations and its agencies, the Advisory Committee on Administrative and Budgetary Questions (ACABQ), reference was made to the possibility of utilizing the review body to be created by the International Seabed Authority (Authority), its Finance Committee, but this was countered as it was considered inappropriate to make such a link. Reservations with respect to these proposals were founded on the fact that the Tribunal is an independent body *vis-à-vis* the United Nations and the Authority.

## C. Scheme to phase in the establishment of the Tribunal

78. The Special Commission deliberated on the administrative arrangements, structure and financial implications of the Tribunal, as reflected in document LOS/PCN/SCN.4/WP.8. That arrangement envisaged the initial establishment of an active and functional Tribunal with two official working languages. A scheme for phasing in the establishment of the Tribunal to serve during the initial stages of its existence was drawn up. The scheme was intended to reflect the most efficient initial institutional structure, taking special account of the necessity for economy and for minimizing the financial burden on States Parties.

79. The main criteria applied were that the Convention, including the Statute of the Tribunal, and the Draft Rules of the Tribunal provide the primary framework within which the Tribunal would function. The appropriate

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26/ LOS/PCN/L.81, para. 6.

27/ Convention, annex VI, art. 2.

international practice, where relevant, in particular that of the International Court of Justice, were resorted to in determining the manner in which the Tribunal would operate and in identifying a functional framework for the Tribunal. For the purpose of estimating relevant financial implications, the experience of similar institutions was resorted to for guidance, while the United Nations practice was used as the basis for staff remuneration and allowances.

80. Particular note has been made of the fact that the Tribunal is responsible for its internal functioning and has a wide degree of discretion in establishing the modalities for doing so.

81. In formulating a scheme to phase in the Tribunal it was sought to ensure that:

(a) The approach was consistent with the requirements of the Convention and the Statute of the Tribunal;

(b) The Tribunal and its chambers would be able to respond, within a reasonable time frame and given the circumstances, to urgent cases, applications or requests for advisory opinions submitted to it;

(c) The institution and its staffing would provide a viable Registry with the capacity to serve the needs of the Tribunal.

82. For the purpose of determining the size and structure of the initial institution which would be fully functional:

(a) It has been assumed that the case-load and the level of activity in contentious cases would be similar to the current level of activity on contentious matters before the International Court of Justice. Additionally, it is anticipated that from the very outset applications would be made for provisional measures and for the prompt release of vessels and crews;

(b) It has been assumed that the Tribunal would use no more than two official working languages. However, unofficial translations of the pleadings, judgments, opinions and orders would be issued in the other four official languages of the United Nations after completion of each application, case or advisory opinion.

### 1. Availability of Members

83. The Statute does not require that the elected Members should refrain from employment or activity, other than certain specified activities. They could thus maintain a professional occupation or some form of employment that is not subject to these restrictions, unless they are actively engaged in the business of the Tribunal.

84. All 21 Members are to be elected at the first election in order to comply with the requirements of the Convention. However, during the initial phase immediately following its establishment, the Tribunal would have the discretion to utilize a limited number of Members to serve actively on a continuing basis

for a fixed period of time, while the others would hold themselves available in reserve. Thereafter there would be a rotation of those in the active group with those in reserve. Thus, by some process of selection a limited number of Members would be identified who are to be active and available for the duration of the fixed time period. The others who are "on reserve" would be aware that it is unlikely that they would be called upon to serve at short notice. Thus, they would be relatively free to be otherwise occupied during that time period. During the next term of such an arrangement, a similar number of Members would be identified on the basis of rotation. Such a system of rotation would need to be done on an equitable basis while ensuring that geographical distribution and the representation of the principal legal systems are assured.

85. Thus, during the initial phase the active Members would have to be available at short notice and possibly to maintain a presence at or near the Seat, while the others could remain in their usual places of residence. The President is required to be resident at the Seat of the Tribunal 28/ and it can be reasonably assumed that the Vice-President would also be required to be present at the Seat at most times.

86. If only these 2 Members are to be active and available at all times, the other 19 Members would be in "reserve". However, this would not enable the Tribunal to function without securing the participation of an additional number of Members as required to constitute a chamber, or to fulfil the quorum requirement.

87. To ensure that all geographic groups are represented among the "active" group of Members, the minimum number of required would be five Members. If it is intended to have a quorum of Members constituting the Tribunal present, then the number of Members involved would be a minimum of 11. This would also permit appropriate geographical distribution. In any of these cases, i.e., whether 2, 5 or 11 Members are required to be on active duty, the remaining Members in each case would hold themselves available in reserve, in the event that a greater number of Members is required or when a full Tribunal has to be constituted.

88. The first alternative of the cost implications (annex VI (scheme A)) is founded on the assumption that two Members are to be active and available at all times and that these would be the President and the Vice-President.

89. The second alternative in the cost implications (annex VI (scheme B)) is that five Members - the President, the Vice-President and a minimum of three other Members - would at all times be active and available. This alternative would permit the constitution of the standing chambers or special chambers, and a Chamber of Summary Procedure, each of which requires no more than five Members. 29/ Even the ad hoc chambers could be constituted, if they are of limited size.

90. The third alternative would be for 11 Members including the President and Vice-President to be in the "active" group and available at all times (annex VI (scheme C)). This would permit not only the constitution of the special

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28/ SCN.4/WP.2/Rev.1/Parts I and II, art. 12, para. 3.

29/ Ibid., art. 15.

/...

chambers and the Chamber of Summary Procedure, but also the constitution of the whole Tribunal with the quorum requirement fulfilled and the constitution of the Seabed Disputes Chamber as well.

91. Two of the alternatives in these proposals provide for the availability of five or more Members in the active and available group. These alternatives would permit the constitution of the standing and ad hoc chambers of limited size. This is consistent with the more recent trends in the experience of international courts and tribunals, which is that disputant parties tend to resort to pre-constituted or ad hoc chambers, as compared with the frequency with which there are requests for the constitution of the full tribunal to hear or determine a case or application.

92. These alternatives also ensure the availability of the Chamber of Summary Procedure which could be pre-constituted and may be resorted to at any time (Statute, art. 15, para. 3). They would also permit the constitution of special chambers comprising a minimum of three Members for dealing with particular categories of disputes (Statute, art. 15, para. 1). These alternative proposals would also permit appropriate geographic distribution and representation of the principal legal systems even within the chambers. These proposals also make it possible to convene all Members of the Tribunal or to convene 11 Members who would constitute a quorum of the whole Tribunal, as and when required, without any restriction and without undue delay. They do not in any way restrict the possibility for the full Tribunal to be constituted and to meet immediately following its initial establishment for such period as may be required to adopt its Rules of Procedure and other internal rules for its functioning or for its administration.

93. As and when the workload of the Tribunal increases, or when there is an intensity of work at any point in time, the Tribunal can function either in its fully constituted form or in its initial form.

### 2. Remuneration of Members

94. The Statute provides for the Members to be remunerated on the basis of annual allowances and special allowances. In any case where a Member is in the "active" group and is available at all times, the remuneration would be the full amount of the annual allowance and the full amount of the special allowance. 30/ The special allowance is payable for every day on which a Member exercises his functions. 31/ In addition, the President receives a special allowance, 32/ and the Vice-President would receive the same for each day on which he/she acts as President. 33/

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30/ Ibid., art. 18, para. 1.

31/ For computational purposes, following the standard practice, the number of working days in a calendar year is established at 250 days. This takes account of weekends and vacation time.

32/ Ibid., art. 18, para. 2.

33/ Ibid., art. 18, para. 3.

95. In order to minimize the cost implications during the initial phase, or at times when the Tribunal is not relatively active, it is proposed in the estimates annexed hereto that the amount of annual allowance should be kept at the basic level. Thus, those Members who are on "reserve" and not actively engaged in the business of the Tribunal would only receive a limited annual allowance (as an honorarium), which for the purpose of the estimates in the present working paper has been established at $25,000. They would not receive a special allowance or any other remuneration in the usual course, unless they are called upon to serve. Their total remuneration would only be the amount of the annual allowance.

96. For those Members who are in the "active" group and are called upon to serve, the special allowance for a year cannot exceed the annual allowance, 34/ and on the basis of the estimates in the present working paper, the maximum special allowance would also thus be $25,000.

97. Given the need for active Members to maintain a presence at or near the Seat of the Tribunal, the estimates propose that a supplementary subsistence allowance applicable to the Seat is to be paid. While the payment of the annual and special allowances are specified in the Statute, there is no provision in the Convention which would prevent the payment of such a subsistence allowance. Where active engagement and presence is required for a prolonged period, the maximum amount of subsistence allowance would be for 250 days 35/ in any calendar year. Utilizing the current level of subsistence payment under United Nations practice for Hamburg, the maximum amount of subsistence payment for any calendar year would therefore be computed at $62,500. 36/ Thus, the maximum remuneration that a Member would receive, including the maximum subsistence allowance, would be $116,000 per year. 37/ When the Tribunal is fully functional and active, the subsistence component would be incorporated into the basic annual and special allowances.

### 3. Structure and staff of the Registry

98. The structure and staffing of the Registry would, to a certain degree, depend on the level of activity of the Tribunal.

(a) Assuming that there would be only two active Members and a minimal workload, the structure of the Registry and corresponding staffing are reflected in annex IVA (scheme A) and the corresponding columns in annex V. The cost implications are in the corresponding column in annex VI.

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34/ Ibid., art. 18, para. 1.

35/ Footnote 31, above.

36/ This computation is based on the current United Nations subsistence rate for Hamburg (approximately $250 per day) paid for a period of 250 days.

37/ This would bring the total remuneration of a Member who is present and functions throughout the year to a comparable level with the salaries of judges of other international courts and tribunals.

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(b) Assuming that five Members are continuously present, with a moderate case-load, the corresponding staffing structure is to be found in annex IVB (scheme B) and the corresponding column in annex V. The cost implications are in the corresponding column in annex VI.

(c) Assuming that 11 Members are present at all times with an increased workload, the corresponding staffing structure is reflected in annex IVC (scheme C) and the corresponding column in annex V, with the cost implications in the corresponding column in annex VI.

99. When compared with the structure of the Registry for a fully functional initial establishment, the staffing requirements for a minimal initial establishment also reflect an approach whereby Professional and General Service staffing is based on the recruitment of multivalent staff who have combined capabilities. For instance, the Secretaries and the Judicial Support Service could have legal, political or technical expertise with linguistic capabilities as well. The General Service staff could also be required to have a combination of capabilities. This approach is consistent with the staffing of other international courts and tribunals, particularly the Registry of the International Court of Justice, which, with a limited number of staff, provides the range of services required. The resort to this approach has permitted further streamlining of staff requirements, as reflected in the attached estimates.

## 4. Languages

100. The Special Commission considered the alternatives and the implications of the Tribunal utilizing one, two or six official working languages. The relevant estimates, [38] which provide a comparative evaluation of one, two or six official working languages, are to be found in annex III.

101. Consultations were held between interested delegations on the question of language to be used by the Tribunal. The Special Commission had before it two working papers. They were: Suggestions of the Latin American and Caribbean Group regarding languages of the Tribunal for the Law of the Sea (SCN.4/WP.12); and Proposal submitted by Austria, Belgium, Canada, Côte d'Ivoire, Czechoslovakia, France, Greece, India, Poland, Senegal and Switzerland (SCN.4/WP.13). Consideration was given to utilizing a limited number of languages, with the pleadings and judgments being later issued after the conclusion of the case or advisory opinion, in all of the other official languages of the United Nations. A final determination will be required as to the official working languages and as to the other languages in which the pleadings and judgments are to be issued.

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[38] Refer SCN.4/WP.8/Add.1.

## 5. General

102. Where there is a fluctuation in the number of Members in active service for any period of time, or regarding the workload, the cost implications would not be directly proportional. The estimated costs are on an annual basis and are indicative for planning purposes. They are only applicable in accordance with the assumptions referred to. They would not hold if applied to shorter periods. Any increase in needs, even for short periods, would require increases at least in temporary assistance and contractual services.

## 6. Trends and directions

103. There was a general understanding that as and when the Tribunal was fully functional and had a substantial case-load, it may then warrant the full complement of Members being available at all times and full staffing of the Registry to meet the demands. However, there was widespread acceptance for phasing in the establishment of the Tribunal during the evolutionary stage, immediately following its establishment upon entry into force of the Convention. For this purpose the trend of the deliberations would lead to a preference for the third scheme contemplated, viz., the scheme whereby a complement of 11 Judges, fulfilling the quorum requirement, would be active and available during the initial phase while leaving open the possibility of expanding to a full-fledged Tribunal as and when necessary.

## Annex IA

## ORGANIZATIONAL CHART OF THE REGISTRY OF THE TRIBUNAL
## (FOR TWO OFFICIAL WORKING LANGUAGES)

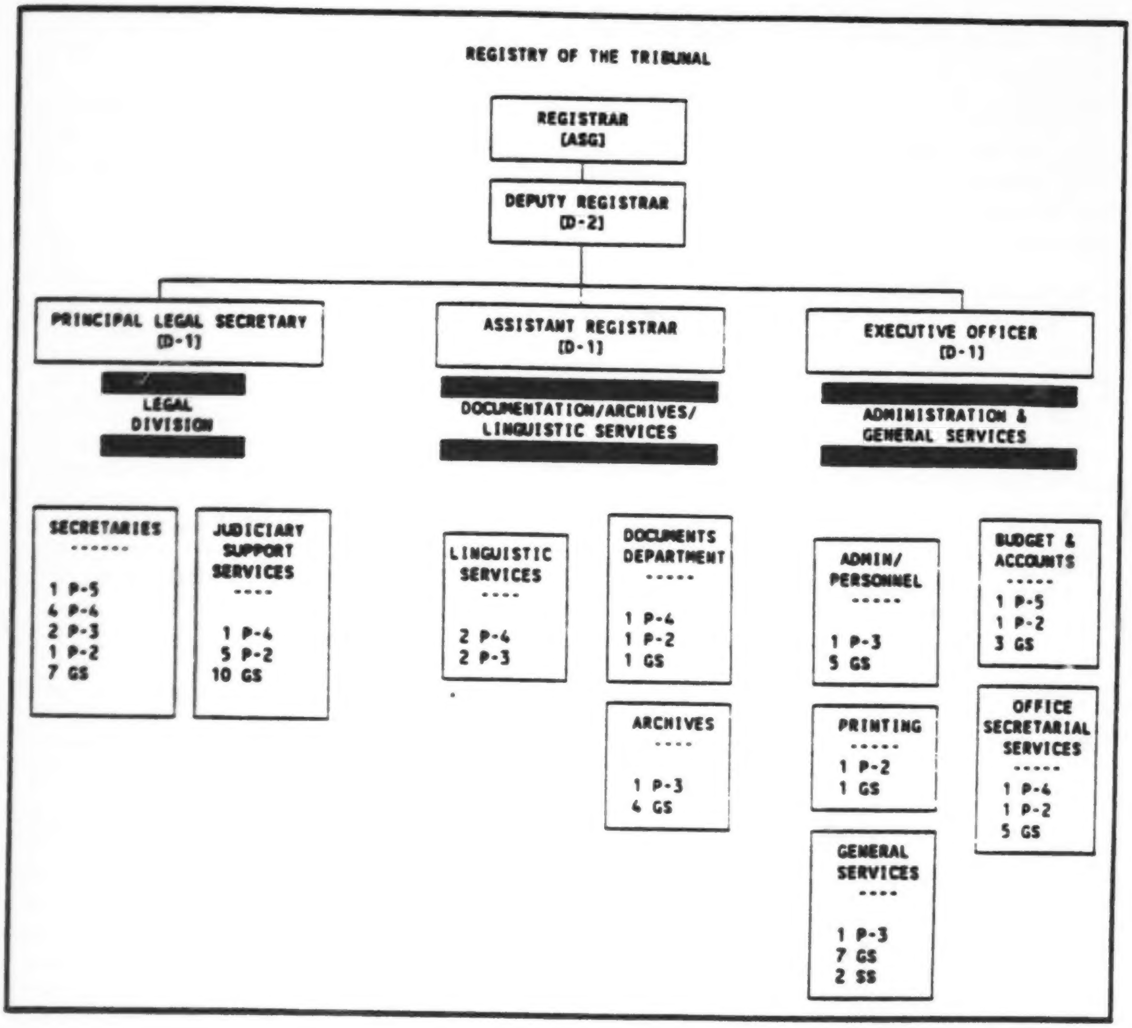

REGISTRY OF THE TRIBUNAL
REGISTRAR [ASG]
DEPUTY REGISTRAR [D-2]
PRINCIPAL LEGAL SECRETARY [D-1]
LEGAL DIVISION
ASSISTANT REGISTRAR [D-1]
DOCUMENTATION/ARCHIVES/ LINGUISTIC SERVICES
EXECUTIVE OFFICER [D-1]
ADMINISTRATION & GENERAL SERVICES
SECRETARIES ------ 1 P-5 4 P-4 2 P-3 1 P-2 7 GS
JUDICIARY SUPPORT SERVICES ---- 1 P-4 5 P-2 10 GS
LINGUISTIC SERVICES ---- 2 P-4 2 P-3
DOCUMENTS DEPARTMENT ----- 1 P-4 1 P-2 1 GS
ARCHIVES ---- 1 P-3 4 GS
ADMIN/ PERSONNEL ----- 1 P-3 5 GS
PRINTING ----- 1 P-2 1 GS
GENERAL SERVICES ---- 1 P-3 7 GS 2 SS
BUDGET & ACCOUNTS ----- 1 P-5 1 P-2 3 GS
OFFICE SECRETARIAL SERVICES ----- 1 P-4 1 P-2 5 GS

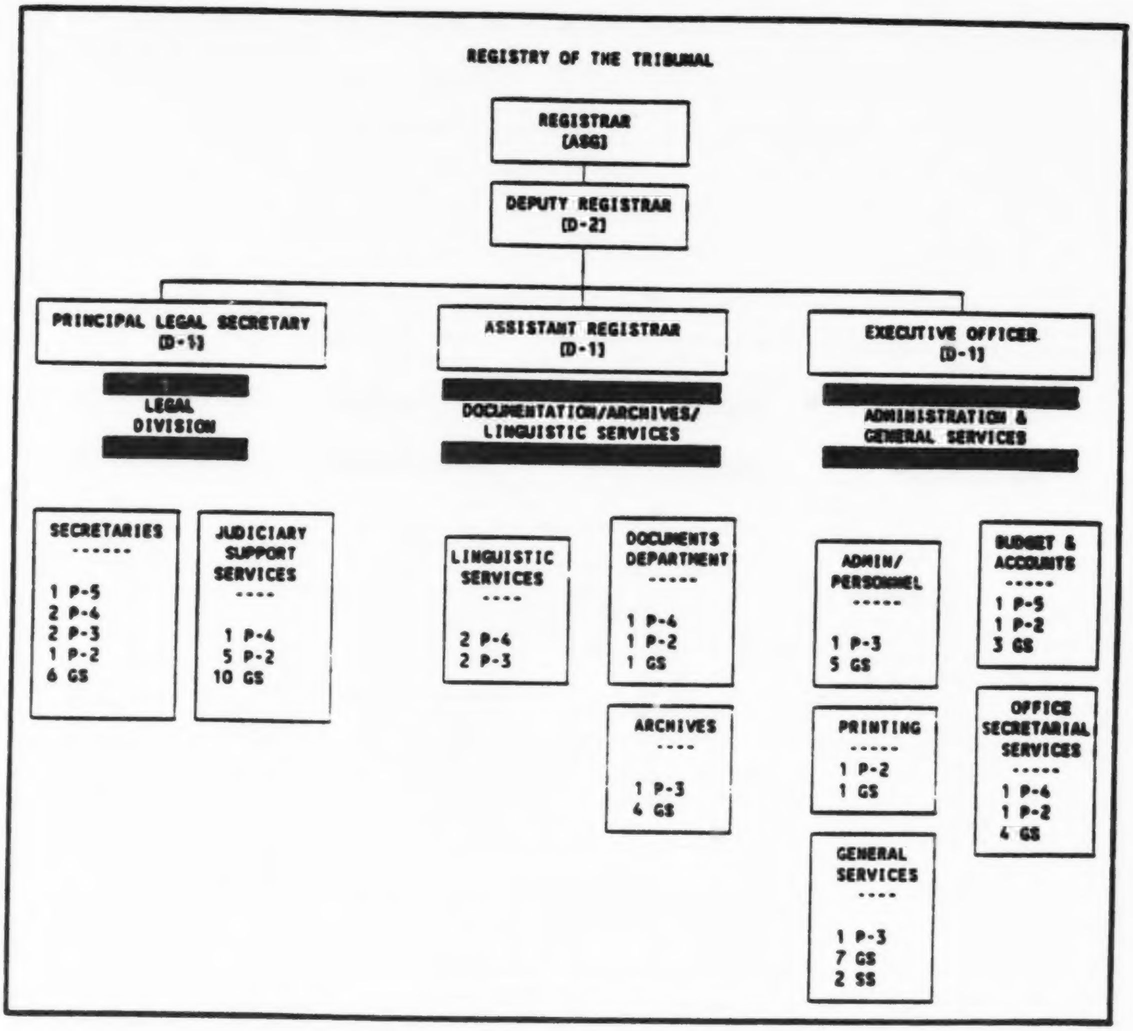
Table 1. Post Requirements

| ASG | D-2 | D-1 | P-5 | P-4 | P-3 | P-2/P-1 | GS Princ. Level | GS Other Level | TOTAL |
|---|---|---|---|---|---|---|---|---|---|
| 1 | 1 | 3 | 2 | 9 | 7 | 10 | 8 | 37 | 78 |

/...

## Annex II

## ORGANIZATIONAL CHART OF THE REGISTRY OF THE TRIBUNAL (FOR ONE OFFICIAL WORKING LANGUAGE)


REGISTRY OF THE TRIBUNAL
REGISTRAR (ASG)
DEPUTY REGISTRAR (D-2)
PRINCIPAL LEGAL SECRETARY (D-1)
ASSISTANT REGISTRAR (D-1)
EXECUTIVE OFFICER (D-1)
LEGAL DIVISION
DOCUMENTATION/ARCHIVES/ LINGUISTIC SERVICES
ADMINISTRATION & GENERAL SERVICES
SECRETARIES ------ 1 P-5 2 P-4 2 P-3 1 P-2 6 GS
JUDICIARY SUPPORT SERVICES ---- 1 P-4 5 P-2 10 GS
LINGUISTIC SERVICES ---- 2 P-4 2 P-3
DOCUMENTS DEPARTMENT ----- 1 P-4 1 P-2 1 GS
ARCHIVES ---- 1 P-3 4 GS
ADMIN/ PERSONNEL ----- 1 P-3 5 GS
PRINTING ----- 1 P-2 1 GS
GENERAL SERVICES ---- 1 P-3 7 GS 2 SS
BUDGET & ACCOUNTS ----- 1 P-5 1 P-2 3 GS
OFFICE SECRETARIAL SERVICES ----- 1 P-4 1 P-2 4 GS

---

### Table 1. Post Requirements
(For 1 official working language)

| ASG | D-2 | D-1 | P-5 | P-4 | P-3 | P-2/P-1 | GS | | TOTAL |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | Princ. Level | Other Level | |
| 1 | 1 | 3 | 2 | 7 | 7 | 10 | 8 | 35 | 74 |

/...

## Annex IC

## ORGANIZATIONAL CHART OF THE REGISTRY OF THE TRIBUNAL
## (FOR SIX OFFICIAL WORKING LANGUAGES)

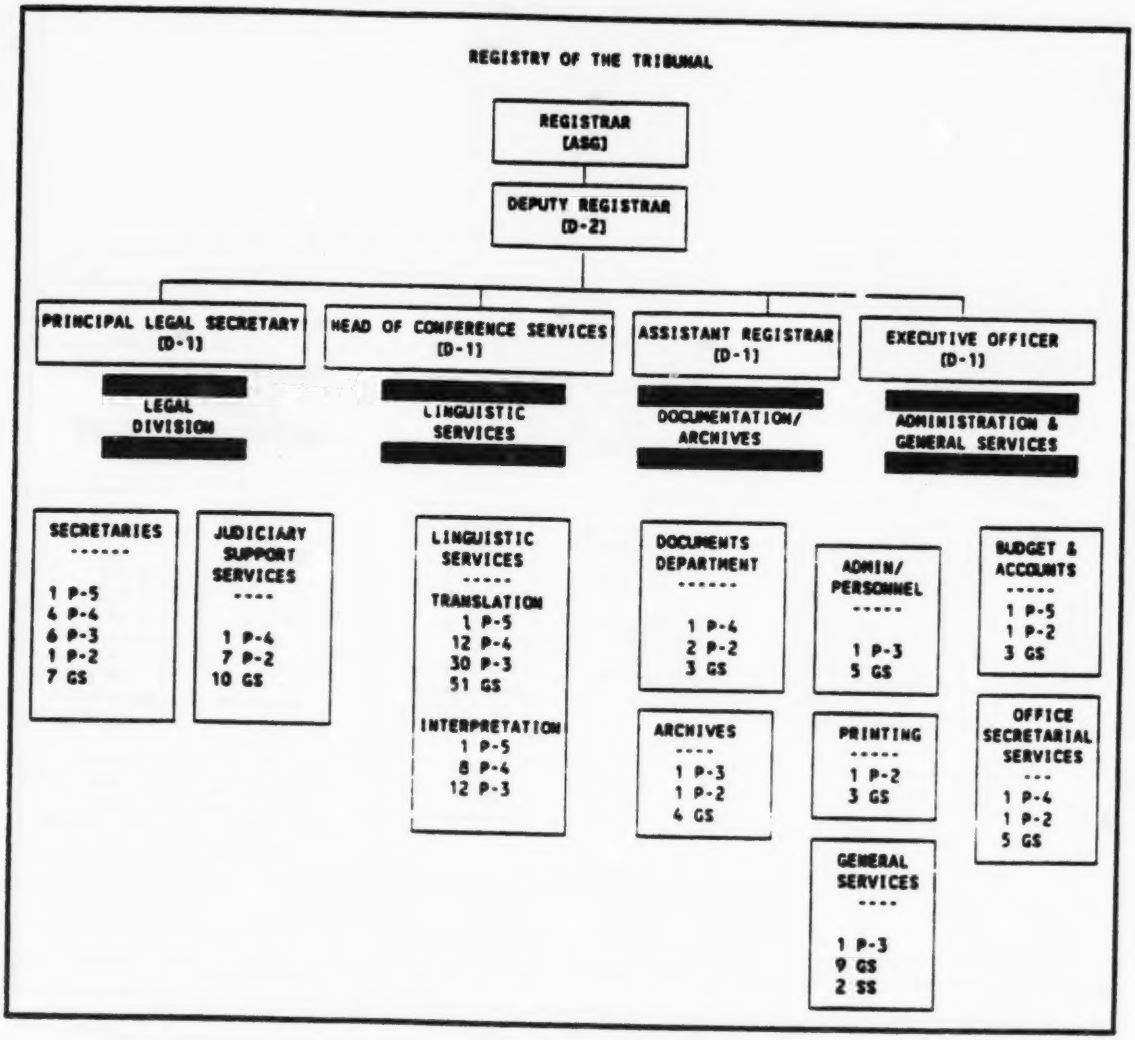

REGISTRY OF THE TRIBUNAL
REGISTRAR [ASG]
DEPUTY REGISTRAR [D-2]
PRINCIPAL LEGAL SECRETARY [D-1]
HEAD OF CONFERENCE SERVICES [D-1]
ASSISTANT REGISTRAR [D-1]
EXECUTIVE OFFICER [D-1]
LEGAL DIVISION
LINGUISTIC SERVICES
DOCUMENTATION/ ARCHIVES
ADMINISTRATION & GENERAL SERVICES
SECRETARIES ------ 1 P-5 4 P-4 6 P-3 1 P-2 7 GS
JUDICIARY SUPPORT SERVICES ---- 1 P-4 7 P-2 10 GS
LINGUISTIC SERVICES ----- TRANSLATION 1 P-5 12 P-4 30 P-3 51 GS
INTERPRETATION 1 P-5 8 P-4 12 P-3
DOCUMENTS DEPARTMENT ------ 1 P-4 2 P-2 3 GS
ARCHIVES ---- 1 P-3 1 P-2 4 GS
ADMIN/ PERSONNEL ----- 1 P-3 5 GS
PRINTING ----- 1 P-2 3 GS
GENERAL SERVICES ---- 1 P-3 9 GS 2 SS
BUDGET & ACCOUNTS ----- 1 P-5 1 P-2 3 GS
OFFICE SECRETARIAL SERVICES --- 1 P-4 1 P-2 5 GS

Table 1. Post Requirements

| ASG | D-2 | D-1 | P-5 | P-4 | P-3 | P-2/P-1 | GS |  | TOTAL |
|---|---|---|---|---|---|---|---|---|---|
|  |  |  |  |  |  |  | Princ. Level | Other Level |  |
| 1 | 1 | 4 | 4 | 27 | 51 | 14 | 23 | 79 | 204 |

/...

## Annex II

## STAFFING STRUCTURE OF THE REGISTRY OF THE TRIBUNAL

| Number of posts | | | Level | Functions | Number of posts | | |
|---|---|---|---|---|---|---|---|
| 1 lang. | 2 lang. | 6 lang. | | | 1 lang. | 2 lang. | 6 lang. |
| 1 | 1 | 1 | ASG | Registrar | 1 | 1 | 1 |
| 1 | 1 | 1 | D-2 | Deputy Registrar | 1 | 1 | 1 |
| 3 | 3 | 4 | D-1 | Assistant Registrar | 1 | 1 | 1 |
| | | | | Principal Legal Secretary (Secretary, Rules Committee) | 1 | 1 | 1 |
| | | | | Executive Officer | 1 | 1 | 1 |
| | | | | Head of Conference Services* | 0 | 0 | 1 |
| 2 | 2 | 4 | P-5 | Accountant/Establishment Officer (Secretary, Budgetary and Administrative Committee) | 1 | 1 | 1 |
| | | | | Senior Secretary (Secretary, Relations and Public Information) | 1 | 1 | 1 |
| | | | | Chief of Translation Section** | 0 | 0 | 1 |
| | | | | Chief of Interpretation Section** | 0 | 0 | 1 |
| 7 | 9 | 27 | P-4 | Head, Documents Dept./Librarian (Secretary, Library and Archives Committee) | 1 | 1 | 1 |
| | | | | First Secretary (Secretary, Staff Appeals Board) | 1 | 1 | 1 |
| | | | | First Secretaries* | 1 | 3 | 3 |
| | | | | Special Assistant | 1 | 1 | 1 |
| | | | | Revisers/Translators** | 2 | 2 | 12 |
| | | | | Interpreters** | 0 | 0 | 8 |
| | | | | Head of Office Secretarial Services | 1 | 1 | 1 |
| 7 | 7 | 51 | P-3 | Secretaries | 2 | 2 | 6 |
| | | | | Revisers/Translators/Précis Writers** | 2 | 2 | 24 |
| | | | | Head of Archives | 1 | 1 | 1 |
| | | | | Administrative/Personnel Officer | 1 | 1 | 1 |
| | | | | Co-ordinator, General Services | 1 | 1 | 1 |
| | | | | Interpreters** | 0 | 0 | 12 |
| | | | | Terminologists** | 0 | 0 | 6 |
| 10 | 10 | 14 | P-2/P-1 | Associate Secretaries | 1 | 1 | 1 |
| | | | | Judiciary Secretaries/Researchers** | 5 | 5 | 7 |
| | | | | Associate Librarian** | 1 | 1 | 2 |
| | | | | Budget Officer | 1 | 1 | 1 |
| | | | | Supervisor, Office Secretarial Serv. | 1 | 1 | 1 |
| | | | | Head of Printing | 1 | 1 | 1 |
| | | | | Associate Archives Officer** | 0 | 0 | 1 |
| 43 | 45 | 102 | GS | Principal level** | 8 | 8 | 23 |
| | | | | Other levels* ** | 33 | 35 | 43 |
| | | | | Security Officers | 2 | 2 | 2 |
| | | | | Sound Engineers** | 0 | 0 | 2 |
| | | | | Typists for Conference Services** | 0 | 0 | 31 |
| 74 | 78 | 206 | | TOTAL | 74 | 78 | 206 |

---

* Additional post(s) for six official languages in comparison with two languages.

** Reduction in posts for one official language in comparison with two languages.

## Annex III

## SUMMARY OF RECURRENT FINANCIAL IMPLICATIONS

(In thousands of United States dollars)

| Objects of expenditure | Annual costs for 1 language* | Annual costs for 2 languages* | Annual costs for 6 languages |
|---|---|---|---|
| Established posts | 3 107.3 | 3 362.7 | 8 995.4 |
| Temporary assistance for meetings | 260.0 | 260.0 | 680.0 |
| General temporary assistance | 78.0 | 78.0 | 204.0 |
| Overtime | 24.0 | 24.0 | 62.8 |
| Temporary posts | 566.2 | 566.2 | 1 480.8 |
| Common staff costs | 1 376.5 | 1 424.5 | 2 607.7 |
| Representation allowances | 3.6 | 3.6 | 3.6 |
| Official travel of staff | 39.0 | 39.0 | 39.0 |
| External printing and binding | 210.0 | 210.0 | 1 610.0** |
| Annual and special allowances of Members | 2 396.3 | 2 396.3 | 2 396.3 |
| Rental and maintenance of premises | 200.0 | 200.0 | 200.0 |
| Rental and maintenance of equipment | 48.0 | 48.0 | 125.5 |
| Communications | 90.0 | 90.0 | 235.6 |
| Hospitality | 5.0 | 5.0 | 5.0 |
| Miscellaneous services | 4.0 | 4.0 | 10.5 |
| Supplies and materials | 125.0 | 125.0 | 326.9 |
| Furniture and equipment | 50.0 | 50.0 | 130.8 |
| Total | 8 672.9 | 8 886.3 | 18 913.7 |

---

* These preliminary estimates are based on the assumption that the Tribunal will have no more than the specified number of working languages shown in the relevant column. However, the judgments and pleadings would later be published externally as unofficial translations in the other working languages of the United Nations.

** Estimates for external printing are tentative. These estimates may have to be revised depending on volume and external printing rates at the duty station.

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## Annex IVA

### ORGANIZATIONAL CHART OF THE REGISTRY OF THE TRIBUNAL

### (SCHEME A)

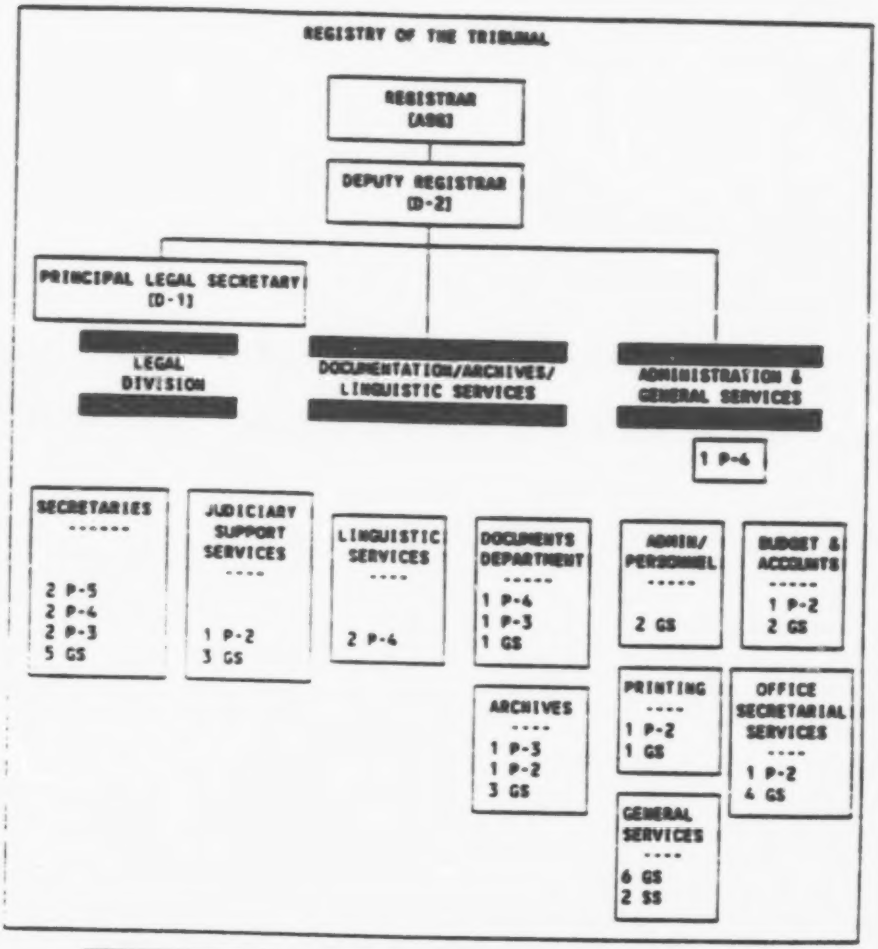

REGISTRY OF THE TRIBUNAL
REGISTRAR (ASG)
DEPUTY REGISTRAR (D-2)
PRINCIPAL LEGAL SECRETARY (D-1)
LEGAL DIVISION
DOCUMENTATION/ARCHIVES/ LINGUISTIC SERVICES
ADMINISTRATION & GENERAL SERVICES
1 P-4
SECRETARIES ------ 2 P-5 2 P-4 2 P-3 5 GS
JUDICIARY SUPPORT SERVICES ---- 1 P-2 3 GS
LINGUISTIC SERVICES ---- 2 P-4
DOCUMENTS DEPARTMENT ----- 1 P-4 1 P-3 1 GS
ARCHIVES ---- 1 P-3 1 P-2 3 GS
ADMIN/ PERSONNEL ----- 2 GS
BUDGET & ACCOUNTS ----- 1 P-2 2 GS
PRINTING ---- 1 P-2 1 GS
OFFICE SECRETARIAL SERVICES ---- 1 P-2 4 GS
GENERAL SERVICES ---- 6 GS 2 SS

**Table 1. Post Requirements**

| ASG | D-2 | D-1 | P-5 | P-4 | P-3 | P-2/P-1 | GS Princ. Level | GS Other Level | TOTAL |
|---|---|---|---|---|---|---|---|---|---|
| 1 | 1 | 1 | 2 | 6 | 4 | 5 | 4 | 25 | 49 |

/...

## Annex IVB

## ORGANIZATIONAL CHART OF THE REGISTRY OF THE TRIBUNAL

(Scheme B)

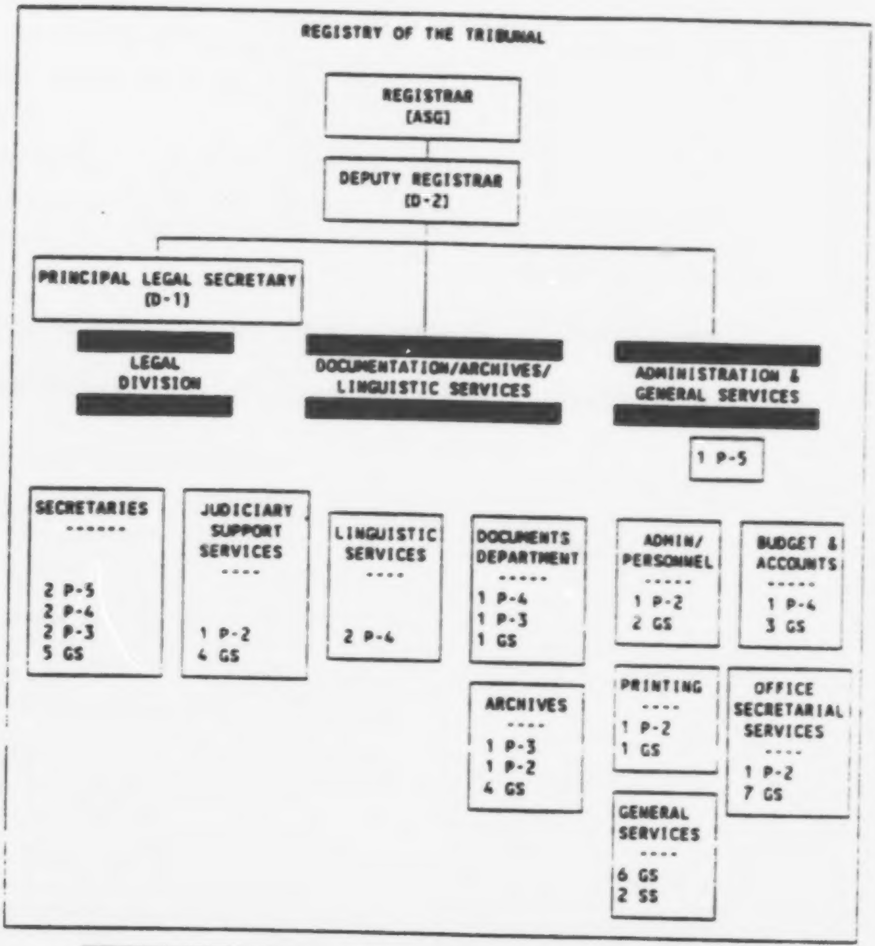

REGISTRY OF THE TRIBUNAL
REGISTRAR [ASG]
DEPUTY REGISTRAR [D-2]
PRINCIPAL LEGAL SECRETARY [D-1]
LEGAL DIVISION
DOCUMENTATION/ARCHIVES/ LINGUISTIC SERVICES
ADMINISTRATION & GENERAL SERVICES
1 P-5
SECRETARIES ------ 2 P-5 2 P-4 2 P-3 5 GS
JUDICIARY SUPPORT SERVICES ---- 1 P-2 4 GS
LINGUISTIC SERVICES ---- 2 P-4
DOCUMENTS DEPARTMENT ----- 1 P-4 1 P-3 1 GS
ARCHIVES ---- 1 P-3 1 P-2 4 GS
ADMIN/ PERSONNEL ----- 1 P-2 2 GS
BUDGET & ACCOUNTS ----- 1 P-4 3 GS
PRINTING ---- 1 P-2 1 GS
OFFICE SECRETARIAL SERVICES ---- 1 P-2 7 GS
GENERAL SERVICES ---- 6 GS 2 SS

Table 1. Post Requirements

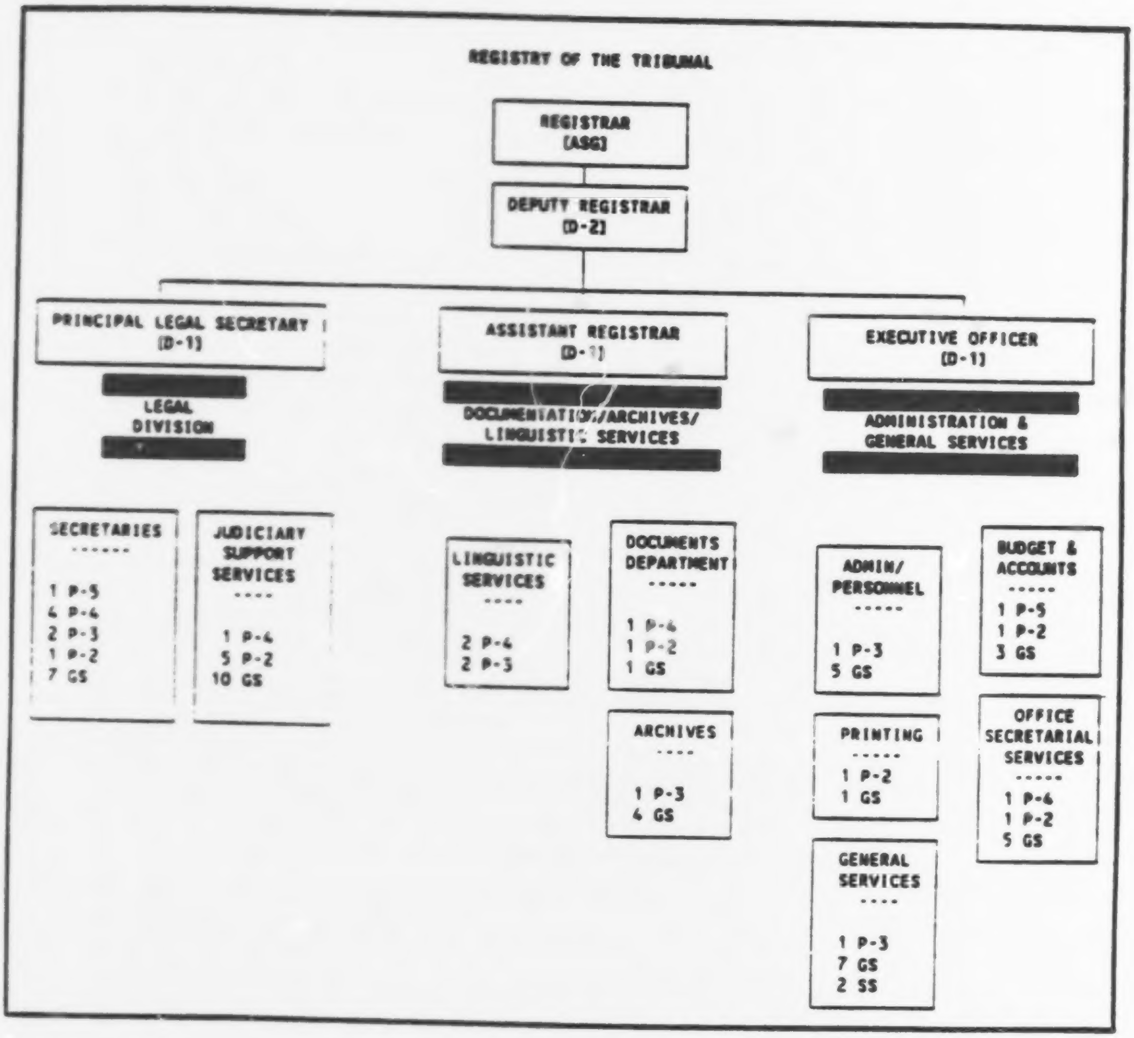
| ASG | D-2 | D-1 | P-5 | P-4 | P-3 | P-2/P-1 | GS |  | TOTAL |
|---|---|---|---|---|---|---|---|---|---|
|  |  |  |  |  |  |  | Princ. Level | Other Level |  |
| 1 | 1 | 1 | 3 | 6 | 4 | 5 | 5 | 30 | 56 |

/...

Annex IVC

## ORGANIZATIONAL CHART OF THE REGISTRY OF THE TRIBUNAL

(SCHEME C)


REGISTRY OF THE TRIBUNAL
REGISTRAR [ASG]
DEPUTY REGISTRAR [D-2]
PRINCIPAL LEGAL SECRETARY [D-1]
LEGAL DIVISION
ASSISTANT REGISTRAR [D-1]
DOCUMENTATION/ARCHIVES/ LINGUISTIC SERVICES
EXECUTIVE OFFICER [D-1]
ADMINISTRATION & GENERAL SERVICES
SECRETARIES ------ 1 P-5 4 P-4 2 P-3 1 P-2 7 GS
JUDICIARY SUPPORT SERVICES ---- 1 P-4 5 P-2 10 GS
LINGUISTIC SERVICES ---- 2 P-4 2 P-3
DOCUMENTS DEPARTMENT ----- 1 P-4 1 P-2 1 GS
ARCHIVES ---- 1 P-3 4 GS
ADMIN/ PERSONNEL ----- 1 P-3 5 GS
BUDGET & ACCOUNTS ----- 1 P-5 1 P-2 3 GS
PRINTING ----- 1 P-2 1 GS
OFFICE SECRETARIAL SERVICES ----- 1 P-4 1 P-2 5 GS
GENERAL SERVICES ---- 1 P-3 7 GS 2 SS

---

Table 1. Post Requirements

| ASG | D-2 | D-1 | P-5 | P-4 | P-3 | P-2/P-1 | GS | | TOTAL |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | Princ. Level | Other Level | |
| 1 | 1 | 3 | 2 | 9 | 7 | 10 | 8 | 37 | 78 |

/...

## Annex V

### STAFFING STRUCTURE OF THE REGISTRY OF THE TRIBUNAL

| Number of posts Schemes | | | | | Number of posts Schemes | | |
|---|---|---|---|---|---|---|---|
| A | B | C | Level | Functions | A | B | C |
| 1 | 1 | 1 | ASG | Registrar | 1 | 1 | 1 |
| 1 | 1 | 1 | D-2 | Deputy Registrar | 1 | 1 | 1 |
| 1 | 1 | 3 | D-1 | Assistant Registrar | 0 | 0 | 1 |
| | | | | Principal Legal Secretary (Secretary, Rules Committee) | 1 | 1 | 1 |
| | | | | Executive Officer | 0 | 0 | 1 |
| 2 | 3 | 2 | P-5 | Accountant/Establishment Officer (Secretary, Budgetary and Administrative Committee) | 0 | 1 | 1 |
| | | | | Senior Secretary (Secretary, Public Relations) | 1 | 1 | 1 |
| | | | | Senior Secretary | 1 | 1 | 0 |
| 6 | 6 | 9 | P-4 | Accountant/Establishment Officer | 1 | 1 | 0 |
| | | | | Head, Documents Dept./Librarian (Secretary, Library and Archives Committee) | 1 | 1 | 1 |
| | | | | First Secretary (Secretary, Staff Appeals Board) | 1 | 1 | 1 |
| | | | | First Secretaries | 0 | 0 | 3 |
| | | | | Special Assistant | 0 | 0 | 1 |
| | | | | Revisers/Translators | 2 | 2 | 2 |
| | | | | Information Officer | 1 | 1 | 0 |
| | | | | Head of Office Secretarial Services | 0 | 0 | 1 |
| 4 | 4 | 7 | P-3 | Secretaries | 1 | 1 | 2 |
| | | | | Special Assistant | 1 | 1 | 0 |
| | | | | Revisers/Translators | 0 | 0 | 2 |
| | | | | Head of Archives | 1 | 1 | 1 |
| | | | | Head of Administration/Personnel | 0 | 0 | 1 |
| | | | | Co-ordinator, General Services | 0 | 0 | 1 |
| | | | | Librarian | 1 | 1 | 0 |
| 5 | 5 | 10 | P-2/P-1 | Associate Secretary | 0 | 0 | 1 |
| | | | | Judiciary Secretaries/Researchers | 1 | 1 | 5 |
| | | | | Associate Librarian | 0 | 0 | 1 |
| | | | | Associate Administrative/Budget Officer | 1 | 1 | 1 |
| | | | | Head of Office Secretarial Services | 1 | 1 | 1 |
| | | | | Head of Printing | 1 | 1 | 1 |
| | | | | Associate Archives Officer | 1 | 1 | 0 |
| 29 | 35 | 45 | GS | Principal level | 4 | 5 | 8 |
| | | | | Other levels | 23 | 28 | 35 |
| | | | | Security Officers | 2 | 2 | 2 |
| 49 | 56 | 78 | | TOTAL | 49 | 56 | 78 |

/...

## Annex VI

## SUMMARY OF RECURRENT FINANCIAL IMPLICATIONS

(In thousands of United States dollars)

| Objects of expenditure | Annual Costs | | |
|---|---|---|---|
| | Scheme A a/ | Scheme B b/ | Scheme C c/ |
| Established posts | 2 108.2 | 2 365.9 | 3 362.7 |
| Temporary assistance for meetings | 260.0 | 190.0 | 260.0 |
| General temporary assistance | 85.5 | 81.3 | 78.0 |
| Overtime | 40.0 | 35.0 | 24.0 |
| Temporary posts | 413.8 | 413.8 | 566.2 |
| Common staff costs | 767.7 | 1 168.1 | 1 625.5 |
| Representation allowances | 3.6 | 3.6 | 3.6 |
| Official travel of staff | 60.5 | 49.5 | 42.0 |
| External printing and binding | 210.0 | 210.0 | 210.0 |
| Annual and special allowances of Members | 955.0 | 1 133.5 | 1 574.5 |
| Rental and maintenance of premises | (200.0) | (200.0) | (200.0) d/ |
| Rental and maintenance of equipment | 30.2 | 35.1 | 48.0 |
| Communications | 56.5 | 65.8 | 90.0 |
| Hospitality | 3.5 | 3.7 | 5.0 |
| Miscellaneous services | 2.5 | 2.9 | 4.0 |
| Supplies and materials | 78.5 | 91.4 | 125.0 |
| Furniture and equipment | 31.4 | 36.5 | 50.0 |
| TOTAL | 5 106.9 | 5 956.1 | 8 068.5 |

---

Note. Data on costs of established posts, common staff costs, and representation allowance applicable for 1991 are based on the United Nations "Standard Costs Version 22/90" of May 1989, the latest published version available at this time. In the absence of data applicable to UN staff in Hamburg, the data on duty station Hague is used in the table.

a/ 2 Members present at seat, 19 Members hold themselves available

b/ 5 Members present at seat, 16 Members hold themselves available

c/ 11 Members present at seat, 10 Members hold themselves available

d/ Not included in total. In the event that no rental is involved, maintenance costs may be required.

/...

LOS/PCN/SCN.4/WP.16/Add.7*
18 October 1993

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY
AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 4

# PROVISIONAL REPORT OF SPECIAL COMMISSION 4

(DRAFT REPORT OF THE PREPARATORY COMMISSION UNDER PARAGRAPH 10 OF RESOLUTION I CONTAINING RECOMMENDATIONS FOR SUBMISSION TO THE MEETING OF STATES PARTIES TO BE CONVENED IN ACCORDANCE WITH ANNEX VI, ARTICLE 4, OF THE CONVENTION, REGARDING PRACTICAL ARRANGEMENTS FOR THE ESTABLISHMENT OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA)

## Addendum

## REPORT WITH RECOMMENDATIONS CONCERNING THE INITIAL FINANCING AND BUDGET OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

(Prepared by the Secretariat)

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| II. GOVERNING PRINCIPLES | 7 - 9 | 187 |

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* This working paper also constitutes addendum 7 to document LOS/PCN/SCN.4/WP.15 which was not previously issued as a separate document.

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| IV. | PROVISIONAL ARRANGEMENTS .......................... | 14 - 17 | 189 |
| V. | WORKING CAPITAL FUND .............................. | 18 - 20 | 190 |
| VI. | ALTERNATIVE SOURCES OF INITIAL FUNDING ............ | 21 - 22 | 190 |
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## INTRODUCTORY NOTE

1. The initial financing of the International Tribunal for the Law of the Sea and the formulation of its first budget were considered by Special Commission 4 on the basis of the working paper presented by the Secretariat (LOS/PCN/SCN.4/WP.11). The summary of the discussions of the Special Commission on the subject are contained in the Chairman's summary of discussions (LOS/PCN/SCN.4/L.18).

2. The Special Commission decided that since it was of importance, some clear recommendations should be formulated with regard to the initial financing and budget of the Tribunal in order to facilitate the decision-making thereon by the Meeting of States Parties. The Special Commission thus mandated the Secretariat to prepare a "Report with recommendations concerning the initial financing and budget of the Tribunal", taking into consideration the deliberations of the Special Commission in this regard. The present working paper constitutes the response thereto.

## I. GENERAL

3. The Special Commission considered the precedent of the United Nations and the practice followed by its Preparatory Commission, and also the manner in which other new international institutions or bodies have been established by the United Nations. In accordance with the deliberations of the Special Commission, the conclusion was drawn that historic precedent should also be considered, particularly as it related to the establishment, as an organ of the League of Nations, of the Permanent Court of International Justice in The Hague, since it was the most appropriate experience for the creation *ab initio* of an international judicial body of a global character. Consideration was also given to the experience of the International Court of Justice under the Charter of the United Nations.

4. It was the understanding of the Special Commission that the recommendations should take into account that at the outset the workload would probably be light and consequently there should be provision for the phasing in of the Tribunal. Account should be taken of the fact that initially there may not be a need for the full complement of judges in view of the resulting financial implications. This is reflected in section VII below.

5. It was also the understanding of the Special Commission that fundamental to the nature of the International Tribunal and its central role in the settlement of the disputes under the Convention is that it should be *sui generis*, stand alone, and be financially autonomous. In that regard the Tribunal is different from the International Court of Justice, which would otherwise be the principal judicial institution of reference with regard to the different aspects of its establishment; hence also the difficulty in formulating original recommendation as to the financing and budget of the Tribunal.

6. As a matter of convenience, it was considered appropriate to divide the budgetary recommendations into two sections, following the pattern of the working paper (LOS/PCN/SCN.4/WP.11). The two sections would respectively be:

/...

(1) requirements for the initial establishment, both preliminary and provisional, to serve during the early functioning; and (2) long-term requirements which would provide for the appropriation of finances and the permanent arrangements therefor. This would be consistent with the precedent of the Preparatory Commission for the United Nations. It would also be consistent with the experience of the League of Nations.

## II. GOVERNING PRINCIPLES

7. In the financing of the Tribunal, the governing principles would be financial responsibility, fiscal restraint, rational policies and proper administration. These are general guidelines that should constitute the framework of any scheme to be established by the Meeting of States Parties.

8. At all stages, whether during the initial phase, in transition, or when the Tribunal is fully operational, it was understood that certain factors would have to be taken into account. These would include the following:

(a) The financial system should promote the most efficient and economical administration;

(b) Financial controls should not in any way influence or affect the essential independence and impartiality of this judicial body;

(c) Financial factors should not be permitted to frustrate or hinder the free recourse to the Tribunal by all states, whether developed or developing, and by other entities that have access to it;

(d) Parties before the Tribunal should be on an equal footing.

9. In the initial establishment of the Tribunal it was broadly accepted that:

(a) The provisional arrangements should, to the extent possible, minimize the initial costs to States Parties to the Convention, taking into account that the work of the Tribunal will evolve over a number of years;

(b) The development of the Tribunal into a full-scale judicial body should be phased in;

(c) The phasing in should be on the basis of the anticipated and growing workload during the initial years. 1/

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1/ See the Chairman's summary of discussions on administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/L.14); see also the working paper on administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.8); as well as that on a scheme to phase in the establishment of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.8/Add.2).

It was also understood that financial implications would be greater as the case-load increases.

## III. FINANCIAL ARRANGEMENTS

### Sources of financing the Tribunal

10. When providing for the establishment of the Tribunal, the Convention [2] states that the expenses of the Tribunal shall be borne by the States Parties and the International Seabed Authority and also by the users of the Tribunal, other than States Parties. Contributions would be made primarily by States Parties and the Authority. With regard to the contribution by States Parties, the Authority, and by entities other than States Parties, there is no clear guidance in the Convention with regard to how to assess and quantify their contributions to the costs of the Tribunal.

11. Apportionment of contributions (scale of assessments) - A determination needs to be made as to the manner in which the financing of the Tribunal would be apportioned between States Parties, the Authority and parties to proceedings before the Tribunal. A scheme for apportionment or a scale of assessments would have to be adopted. The determinations could be based on the capacity of each to pay, taking into account the established criteria and the international practice in this regard.

12. The experience of the United Nations was that the expenses were apportioned among Member States according to the capacity to pay taking into account: (a) comparative income per head of population; (b) temporary dislocation of national economies arising out of the Second World War; and (c) the ability of Members to secure foreign currency.

### Budgetary control and administration

13. The Meeting of States Parties needs to conclude on several basic arrangements for the Tribunal. In doing so it may be expected to follow precedent and rely on the experience of the United Nations system:

(a) Periodicity of budget. The budget of the Tribunal should be on an annual basis initially, with the possibility of revision or change to a biennial budget if considered appropriate. This takes into account that during the initial phasing in, an annual budget would permit greater flexibility and would require less forecasting and long-term assumptions. This follows the experience of the United Nations;

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[2] Annex VI, art. 19.

/...

(b) Preparation of budget. The Registrar, as chief administrative officer, should formulate and present the initial budget of the Tribunal to the Meeting of States Parties, and thereafter as may be determined by the Meeting. Such an arrangement is consistent with the practice of the United Nations where the Secretary-General, as its chief administrative officer, fulfils a corresponding function;

(c) Budget review process. The Commission did not arrive at any final conclusion. However, it examined the alternatives as to the budget review process and the composition of the body that would be given the competence to function as a review mechanism. It left open the option of arriving at an arrangement whereby the Advisory Committee on Administrative and Budgetary Questions (ACABQ) of the General Assembly of the United Nations could serve as an independent review body. Any financial review bodies established for the International Seabed Authority were not considered appropriate, *inter alia*, since the International Seabed Authority would be a contributor to the budget of the Tribunal; 3/

(d) Operating currency. In determining which would be the currency in which the Tribunal will operate, consideration should be given to the fact that the currency of the host country of the headquarters has in practice been used in the case of the United Nations.

## IV. PROVISIONAL ARRANGEMENTS

14. Pending the review and adoption of the first annual budget of the Tribunal, it was concluded that a means of financing the interim expenses and providing for an interim mechanism to control the provisional budget and controlling the interim expenses needed to be determined. This appears necessary in view of the anticipated delay in the approval of a scale of assessments for apportioning expenses between States Parties and the International Seabed Authority, and in determining the methodology to be applied. In this context, following international practice, the adoption on an interim basis of an existing scale of assessments such as that of the United Nations was considered an appropriate option. Such an arrangement would necessarily be without prejudice to the adoption later of a scale or assessments specific to the Tribunal.

15. The provisional period for which it would be necessary to make financial arrangements through the adoption of a provisional budget and the establishment of a working capital fund should cover the whole of the first financial year with the possibility of extensions to the next financial period pending renewal, revision or supersedence of the existing arrangement.

16. An important corollary to the provisional arrangements for financing is the formulation of draft financial regulations, which would incorporate the terms of the provisional budget and the working capital fund.

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3/ Annex VI, art. 19, of the Convention.

17. It is understood from experience (United Nations) that there would be a short period before a working capital fund could be established and in the interim the expenses would have to be financed by some other means.

## V. WORKING CAPITAL FUND

18. The establishment of a working capital fund is foreseen in order to cover the initial period, before a scale of assessments is approved and assessed contributions paid in. This should also cover incidental costs resulting from the Meeting of States Parties.

19. Given the necessity to maintain a financial reserve for the administration of this Tribunal, the arrangement for a working capital fund should be continued, in addition to the general fund established. This has been the experience of international organizations, and particularly so in the case of the United Nations.

20. The working capital fund for a new international institution may be made up of advances from States Parties. These advances could be reimbursable or non-reimbursable, or eventually set off against assessed contributions. The contributions to the working capital fund were not credited to the assessed contributions of Member States in the case of the United Nations. There has also been a recent experience where the working capital fund was very substantially contributed to by the host country, which also provided host facilities. Another alternative in the existing experience has been the provision of a loan from the United Nations.

## VI. ALTERNATIVE SOURCES OF INITIAL FUNDING

21. The Special Commission reviewed the alternatives as regards initial financing of the Tribunal. No conclusion was drawn as regards apportioning expenses among the States Parties. The option of advanced payment against contributions to be assessed in the future was considered one possible source of initial funding. Alternative means of funding would include:

(a) A reimbursable or non-reimbursable loan from the United Nations;

(b) Advances against future contributions from States that are or will be States Parties;

(c) Reimbursable or non-reimbursable contributions by States that have taken an initiative in establishing the Tribunal or by the host country.

22. In the case of the United Nations, Governments that made advances against future contributions later treated those advances as non-reimbursable loans and did not seek credit for these payments against their assessed contributions. Some delegations were of the view that an individual State should not be responsible for the initial financing of the Tribunal since it was intended to be an independent and neutral institution. In that view, the example of the United Nations University where, as an alternative source of initial funding, the host country provided a substantial endowment amounting to $100 million, was

not considered appropriate. Other delegations considered that experience as an appropriate example of an alternative source of financing the Tribunal. The Commission concluded that, although the United Nations University is different from the Tribunal, it nevertheless constitutes a useful example.

## VII. MEETING OF STATES PARTIES

### Considerations in decision-making

23. In its decision-making, it would be appropriate for the Meeting of States Parties to take into consideration the following factors:

(a) Physical facilities would be made available to the Tribunal by the Government of Germany; 4/

(b) Operating costs should be reduced in order to achieve maximum economy and the highest possible level of efficiency (see LOS/PCN/SCN.4/WP.8 and Add.1 and 2; LOS/PCN/SCN.4/WP.15/Add.6);

(c) The Tribunal is independent and would not therefore enjoy shared support services and facilities, unless the Meeting of States Parties decides otherwise;

(d) A cost-effective institution should be achieved through: the scheme to have 11 members of the Tribunal available at the initial stage (instead of all 21 judges) and the establishment of a Registry that is not full-fledged with the postponement of appointments to highly paid level posts; and the use by the Tribunal of only two official working languages.

### Premises occupied by the Tribunal

24. The Meeting of States Parties would have to consider and adopt any arrangements made between the Tribunal and the host country. This would then enable it to consider the expenses of the premises to be occupied by the Tribunal. It should be taken into consideration that some of the costs might be borne by the Government of Germany (providing basic fixtures and furniture for the buildings) but that some requirements and facilities are necessary to supplement the offer of Germany and that their costs would be the responsibility of the Tribunal.

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4/ See communications from the Government of Germany (LOS/PCN/80 and LOS/PCN/106 and subsequent reports (LOS/PCN/SCN.4/L.6, L.8, L.12, L.16 and L.16/Add.1)). The Government of Germany would provide the buildings (see LOS/PCN/SCN.4/WP.15). This does not include provision for the residence of the President of the Tribunal, who would reside at the seat of the Tribunal.

best copy available

LOS/PCN/SCN.4/WP.16/Add.8
9 December 1993

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY
AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 4

# PROVISIONAL REPORT OF SPECIAL COMMISSION 4

## (DRAFT REPORT OF THE PREPARATORY COMMISSION UNDER PARAGRAPH 10 OF RESOLUTION I CONTAINING RECOMMENDATIONS FOR SUBMISSION TO THE MEETING OF STATES PARTIES TO BE CONVENED IN ACCORDANCE WITH ANNEX VI, ARTICLE 4, OF THE CONVENTION, REGARDING PRACTICAL ARRANGEMENTS FOR THE ESTABLISHMENT OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA)

## Addendum*

(Provisional agenda for the First Meeting of States Parties to the Convention, convened in accordance with annex VI, article 4, of the Convention)

(Working paper prepared by the Secretariat)

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* This working paper also constitutes addendum 8 to document LOS/PCN/SCN.4/WP.15, which was not previously issued as a separate document.

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## PROVISIONAL AGENDA FOR THE FIRST MEETING OF STATES PARTIES 1/

1. Opening of the Meeting of States Parties by the Secretary-General.
2. Election of the Chairman.
3. Adoption of the agenda.
4. Adoption of the rules of procedure.
5. Election of Vice-Chairmen.
6. Appointment of the Credentials Committee.
7. Organization of work.
8. Election of the members of the Tribunal in accordance with article 4, paragraph 4, of the Statute.
9. Consideration of the subject-matter referred to in the draft report of the Preparatory Commission under paragraph 10 of resolution I containing recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea.
10. Consideration of the provisional budget, financial organization and methods of assessing, apportioning and collecting contributions from States Parties and the International Seabed Authority.
11. Consideration of the Headquarters Agreement.
12. Consideration of a decision, if necessary, to convene a further session or sessions of the Meeting of States Parties (as well as the venue for the next meeting).
13. Consideration of other items.

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1 Based on the provisional agenda of the first session of the Third United Nations Conference on the Law of the Sea (A/CONF.62/1); and the provisional agenda for the first part of the first session of the General Assembly (report of the Preparatory Commission of the United Nations, chap. I, sect. 2, document PC/20).

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LOS/PCN/SCN.4/WP.16/Add.9
9 December 1993

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEABED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 4

# PROVISIONAL REPORT OF SPECIAL COMMISSION 4

## (DRAFT REPORT OF THE PREPARATORY COMMISSION UNDER PARAGRAPH 10 OF RESOLUTION I CONTAINING RECOMMENDATIONS FOR SUBMISSION TO THE MEETING OF STATES PARTIES TO BE CONVENED IN ACCORDANCE WITH ANNEX VI, ARTICLE 4, OF THE CONVENTION, REGARDING PRACTICAL ARRANGEMENTS FOR THE ESTABLISHMENT OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA)

## Addendum*

(Provisional rules of procedure for the Meeting of States Parties to the Convention, convened in accordance with Annex VI, article 4, of the Convention)

(Working paper prepared by the Secretariat)

### Explanatory note

1. Special Commission 4 decided that provisional rules of procedure should be prepared by the Secretariat and made available for the Meeting of States Parties, but that it would not be necessary for the Special Commission to review the provisional rules before its submission to the Meeting of States Parties (LOS/PCN/L.81, paras. 16 and 17).

2. The present working paper was prepared by the Secretariat pursuant to that request and will be transmitted to the Meeting of States Parties as an addendum to the report of the Special Commission.

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* This working paper also constitutes addendum 9 to document LOS/PCN/SCN.4/WP.15, which was not previously issued as a separate document.

3. Since the issues were not discussed in the Special Commission, the Secretariat drew on the most relevant precedent, in particular, the rules of procedure of the Third United Nations Conference on the Law of the Sea (A/CONF.62/30/Rev.3); those of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea (LOS/PCN/28 and Corr.1); the provisional rules of procedure of the General Assembly prepared by the Preparatory Commission of the United Nations (PC/20); the rules of procedure of the General Assembly (A/520/Rev.14); and the draft standard rules of procedure for United Nations Conferences (A/37/163).

4. In formulating the provisions in the present working paper, the precedent referred to had necessarily to be modified, taking into account the nature of the Meetings of States Parties. While the practices of the institutionalized standing bodies, such as the General Assembly of the United Nations, are appropriate in certain contexts, it is to be noted that the Meeting of States Parties would not be quite of the same character. Likewise, the precedents relating to conferences, such as the Third United Nations Conference on the Law of the Sea and sessions of the Preparatory Commission itself, are most relevant but they do not fulfil all of the requirements. Unlike a conference with a single and continuing agenda, each Meeting of States Parties would have a different and evolving agenda which is not continuing.

## PROVISIONAL RULES OF PROCEDURE

## I. MEETINGS

### Rule 1

### First and subsequent Meetings of States Parties

1. A Meeting of States Parties to the United Nations Convention on the Law of the Sea (hereinafter referred to as "the Convention") shall be held within three years of the first Meeting of States Parties convened within six months of the date of entry into force of the Convention by the Secretary-General in accordance with Annex VI, article 4, of the Convention.

2. Meetings of States Parties to the Convention shall be reconvened every three years thereafter.

### Rule 2

### Meaning of the terms "the Meeting" and "Meeting of States Parties"

1. For the purposes of these rules "the Meeting" refers to the composite body of States Parties participating.

2. In so far as a Meeting of States Parties refers to the occasion when States Parties meet periodically for the purposes referred to in Annex VI, article 4, references in these rules would be made to "Meeting of States Parties".

### Rule 3

### Notification

Meetings of States Parties shall be convened by notification addressed to States Parties at least ninety days in advance of the opening of the Meeting of States Parties.

### Rule 4

### Special Meetings of States Parties

1. Special Meetings of States Parties shall be held within ninety days of:

(a) The receipt by the President of a request for such a Meeting of States Parties from a majority of States Parties;

(b) The occurrence of a vacancy in the membership of the Tribunal; and

(c) The request of the President in consultation with the members of the Tribunal.

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2. The date of commencement and the duration of each Meeting of States Parties shall be decided by the President in consultation with the States Parties. 1/

### Rule 5

### Notification to observers

Copies of the notice convening each Meeting of States Parties shall be addressed to observers referred to in rule 15.

### Rule 6

### Temporary adjournment of meetings

The Meeting may decide to adjourn temporarily and resume at a later date.

## II. AGENDA

### Rule 7

### Provisional agenda

The provisional agenda for the Meeting of States Parties shall be drawn up by the Registrar and communicated to the States Parties and to observers at least sixty days before the opening of the Meeting of States Parties. The provisional agenda for the triennial Meeting of States Parties shall include:

(a) Election to fill vacancies in the membership of the Tribunal; 2/

(b) A report of the Registrar on the work of the Tribunal;

(c) Items, the inclusion of which have been ordered at a previous Meeting of States Parties;

(d) Items proposed by the President and a majority of members of the Tribunal;

(e) Items proposed by a State Party;

(f) Items pertaining to the budget for the current or next financial period and the report on the accounts for the previous financial period; and

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1/ Consistent with article 6, paragraph 1, of Annex VI.

2/ Consistent with the purpose of the meeting convened in accordance with article 4, paragraph 4, of Annex VI to fill vacancies arising upon the expiration of the three-year term of judges in the first instance, and thereafter the triennial cadence of vacancies (article 5 of Annex VI).

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(g) All items which the Registrar deems necessary to put before the Meeting.

### Rule 8

### Provisional agenda for special Meetings of States Parties

The provisional agenda for a special Meeting of States Parties shall consist only of those items proposed for consideration in the request for the holding of the Meeting of States Parties.

### Rule 9

### Supplementary items

Any State Party, the President in consultation with members of the Tribunal, or the Registrar, may, at least thirty days before the date fixed for the opening of the Meeting of States Parties, request the inclusion of supplementary items in the agenda. Such items shall be placed in a supplementary list, which shall be communicated to the States Parties and to observers at least twenty days before the opening of the Meeting of States Parties.

### Rule 10

### Additional items

Additional items of an important and urgent character, proposed for inclusion in the agenda less than thirty days before the opening of the Meeting of States Parties or during a Meeting of States Parties, may be placed on the agenda if the States Parties so decide by a majority of the States Parties present and voting.

### Rule 11

### Adoption of the agenda

At each Meeting of States Parties, the provisional agenda and the supplementary list, together with the report of the General Committee thereon, shall be submitted to the Meeting for approval as soon as possible after the opening of the Meeting of States Parties.

### Rule 12

**Amendment and deletion of items**

Items on the agenda may be amended or deleted by a majority of the States Parties present and voting.

### Rule 13

**Modifications of the allocation of expenses**

No proposal for a modification of the allocation of expenses for the time being in force shall be placed on the agenda unless it has been communicated to the States Parties at least ninety days before the opening of the Meeting of States Parties.

## III. PARTICIPATION

### Rule 14

**States Parties**

The Meeting is open to States Parties to the United Nations Convention on the Law of the Sea, as defined in article 1, paragraph 2, of the Convention.

### Rule 15

**Observers**

1. The following may participate as observers in the Meeting:

(a) Observers referred to in rule 2 of the Rules of Procedure of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea;

(b) Observers referred to in article 319, paragraph 3 (b), of the Convention; 3/

(c) Non-governmental organizations recognized by the Economic and Social Council.

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3/ Article 319, paragraph 3 (b), of the Convention provides for the participation of observers, by a reference to article 156, paragraph 3. That article provides that: "Observers at the Third United Nations Conference on the Law of the Sea who have signed the Final Act and who are not referred to in article 305, paragraph 1 (c), (d), (e) or (f), shall have the right to participate in the Authority as observers, in accordance with its rules, regulations and procedures."

2. Representatives of observers referred to in paragraph 1 (a) and (b) of this rule may participate subject to the provisions of these rules in the deliberations of the Meeting but shall not be entitled to participate in the taking of decisions.

3. Written statements submitted by observers shall be distributed by the Secretariat to the Meeting.

4. Observers referred to in paragraph 1 (c) of this rule may designate representatives to sit at public meetings of the Meeting and, upon invitation by the President and subject to the approval by the Meeting, may make oral statements and submit written statements on questions within the scope of their activities.

## IV. REPRESENTATION AND CREDENTIALS

### Rule 16

### Representation

1. Each State Party shall be represented by accredited representatives and such alternate representatives and advisers as may be required.

2. Observers shall be represented by accredited or designated representatives, as the case may be, and by such alternate representatives and advisers as may be required.

### Rule 17

### Alternates and advisers

The head of delegation may designate an alternate representative or an adviser to act as a representative.

### Rule 18

### Submission of credentials

1. The credentials of representatives and the names of alternate representatives and advisers shall be submitted to the Secretariat, if possible not later than 24 hours after the opening of the Meeting of States Parties.

2. The names of other accredited or designated representatives of observers shall similarly be submitted to the Secretariat.

3. The credentials shall be issued either by the Head of State or Government or by the Minister for Foreign Affairs or other authority responsible for foreign affairs.

### Rule 19

**Credentials Committee**

A Credentials Committee shall be appointed at the beginning of the first Meeting of States Parties to serve for all Meetings of States Parties. It shall consist of nine States Parties, which shall be appointed by the Meeting on the proposal of the President. The Committee shall elect its own officers. It shall examine the credentials of representatives and report to the Meeting without delay.

### Rule 20

**Provisional participation**

Pending a decision of the Meeting upon their credentials, representatives shall be entitled to participate provisionally in the Meeting.

### Rule 21

**Objection to a delegation**

If an objection is raised against the representation of a delegation, such objection shall be considered by the Credentials Committee forthwith. The report thereon shall be submitted to the Meeting without delay for its decision.

## V. OFFICERS

### Rule 22

**Election**

The Meeting shall elect from among the representatives of States participating in the Meeting the following officers: a President, 14 Vice-Presidents and a Rapporteur-General, unless the Meeting shall decide otherwise. These officials shall be elected on the basis of ensuring the representative character of the General Committee; their term of office shall be decided by the Meeting.

### Rule 23

**General powers of the President**

1. In addition to exercising the powers conferred upon him elsewhere by these rules, the President shall preside at the plenary meetings of the Meeting, declare the opening and closing of each meeting, direct the discussions at such meetings, accord the right to speak, put questions to the vote and announce decisions. He shall rule on points of order and, subject to these rules of

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procedure, have complete control over the proceedings and over the maintenance of order thereat. The President may propose to the Meeting the limitation of time to be allowed to speakers, the limitation of the number of times each representative may speak on any question, the closure of the list of speakers, the adjournment or closure of the debate, and the suspension or the adjournment of the meeting.

2. The President, in the exercise of his functions, remains under the authority of the Meeting.

### Rule 24

#### Acting President

1. If the President is absent from a meeting or any part thereof, he shall designate one of the Vice-Presidents to take his place.

2. A Vice-President acting as President shall have the same powers and duties as the President.

### Rule 25

#### Replacement of the President

If the President is unable to perform his functions, a new President shall be elected.

### Rule 26

#### Voting rights of the President

The President, or a Vice-President acting as President, shall not vote but shall designate another member of his delegation to vote in his place.

## VI. GENERAL COMMITTEE

### Rule 27

#### Composition

The General Committee shall comprise the President, who shall preside, the Vice-Presidents and the Rapporteur-General. The Chairmen of any subsidiary bodies as may be established by the Meeting shall be entitled to attend meetings of the General Committee and may participate without vote in the discussions.

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## Rule 28

### Substitute members

If a Vice-President finds it necessary to be absent during a meeting of the General Committee, he may designate a member of his delegation to take his place in the Committee.

## Rule 29

### Functions

1. The General Committee shall, at the beginning of each Meeting of States Parties, consider the provisional agenda together with the supplementary list, and shall make recommendations to the Meeting, with regard to each item proposed, concerning its inclusion in the agenda, the rejection of the request for inclusion or the inclusion of the item in the provisional agenda of a future Meeting of States Parties. It shall, in the same manner, examine requests for the inclusion of additional items in the agenda and shall make recommendations thereon to the Meeting. In considering matters relating to the agenda of the Meeting, the General Committee shall not discuss the substance of any item except in so far as this bears upon the question whether the General Committee should recommend the inclusion of the item in the agenda, the rejection of the request for inclusion or the inclusion of the item in the provisional agenda of a future Meeting of States Parties, and what priority should be accorded to an item the inclusion of which has been recommended.

2. The General Committee shall assist the President and the Meeting in drawing up the agenda for each plenary meeting, in determining the priority of its items and in coordinating the proceedings of any subsidiary bodies that are established. It shall assist the President in the general conduct of the work of the Meeting which falls within the competence of the President. It shall not, however, decide any question of substance.

## Rule 30

### Meetings

The General Committee shall meet periodically throughout each Meeting of States Parties to review the progress of the Meeting, and any subsidiary bodies, as may be established, and to make recommendations for furthering such progress. It shall also meet at such other times as the President deems necessary or upon the request of any other of its members.

### Rule 31

### Participation of States Parties requesting the inclusion of items in the agenda

A State Party which has no representative on the General Committee and which has requested the inclusion of an item in the agenda shall be entitled to attend any meeting of the General Committee at which its request is discussed and may participate, without vote, in the discussion of that item.

## VII. SECRETARIAT

### Rule 32

### Use of term

The Secretariat means the Secretary-General and the Secretariat of the United Nations as may be designated for this purpose, unless the Meeting decides otherwise.

### Rule 33

### Duties of the Secretary-General of the United Nations

1. The Secretary-General shall act in that capacity in the first Meeting of States Parties. He may designate a member of the Secretariat to act in his place at these meetings.

2. The Secretary-General shall perform these functions with respect to subsequent Meetings of States Parties, except in so far as the Meeting decides otherwise.

3. The Secretary-General shall provide and direct the staff required by the Meeting and any subsidiary bodies as may be established.

4. The Secretary-General and the Registrar shall ensure the necessary coordination in providing the services required for the Meetings of States Parties. 4/

### Rule 34

### Duties of the Secretariat

The Secretariat shall receive, translate, reproduce and distribute documents, reports, resolutions and decisions of the Meeting and any subsidiary bodies as may be established; interpret speeches made at meetings, prepare and circulate the records of the Meeting, have the custody and proper preservation

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4/ This can maybe be provided for either through an informal arrangement or in an appropriate relationship arrangement.

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of the documents in the archives of the International Tribunal for the Law of the Sea, distribute all documents of the Meeting to the States Parties and observers; and generally, perform all other work which the Meeting may require.

## VIII. LANGUAGES

### Rule 35

**Languages**

Arabic, Chinese, English, French, Russian and Spanish shall be the languages of the Meeting and any subsidiary bodies as may be established.

### Rule 36

**Interpretation**

1. Speeches made in a language of the Meeting shall be interpreted into the other such languages.

2. Any representative may make a speech in a language other than a language of the Meeting. In that case he shall himself provide for interpretation into one of the languages of the Meeting. Interpretation into the other languages of the Meeting by the interpreters of the Secretariat may be based on the interpretation given in the first such language.

### Rule 37

**Languages of official documents**

Official documents shall be published in the languages of the Meeting.

## IX. RECORDS

### Rule 38

**Records and sound recordings of meetings**

1. Summary records of the plenary meetings of the Meeting shall be kept in the languages of the Meeting. As a general rule, they shall be circulated as soon as possible, simultaneously in all languages of the Meeting, to all representatives, who shall inform the Secretariat within five working days after the circulation of the summary record of any changes they wish to have made.

2. The Secretariat shall make sound recordings of meetings of the Meeting, and any subsidiary bodies as may be established, when they so decide.

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## X. PUBLIC AND PRIVATE MEETINGS

### Rule 39

General principles

1. Meetings shall be held in public unless the Meeting decides otherwise.

2. As a general rule, meetings of any subsidiary bodies, as may be established, shall be held in private.

3. All decisions of the Meeting taken at a private meeting shall be announced at an early public meeting of the Meeting. At the close of a private meeting of any subsidiary body, as may be established, the President may issue a communiqué through the Secretariat.

## XI. CONDUCT OF BUSINESS

### Rule 40

Quorum

1. The President may declare a meeting open and permit the debate to proceed when representatives of at least one third of the States participating in the Meeting of States Parties are present.

2. The presence of representatives of a majority of the States so participating shall be required for any decision to be taken, provided that for a decision on any matter of substance the presence of representatives of two thirds of the States so participating shall be required.

### Rule 41

Speeches

No representative may address the Meeting without having previously obtained the permission of the President. Subject to rules 42 and 45, the President shall call upon speakers in the order in which they signify their desire to speak. The Secretariat shall be in charge of drawing up a list of such speakers. The President may call a speaker to order if his remarks are not relevant to the subject under discussion.

### Rule 42

Precedence

The Chairman of any subsidiary body that is established may be accorded precedence for the purpose of explaining the conclusions arrived at by that body.

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### Rule 43

### Statement by the Registrar

The Registrar, or a member of the Registry designated by him as his representative, may at any time make either oral or written statements to the Meeting concerning any question under consideration by it.

### Rule 44

### Statement by the Secretariat

The Secretary-General, or a member of the Secretariat designated by him as his representative, may at any time make either oral or written statements to the Meeting concerning any question under consideration by it.

### Rule 45

### Points of order

During the discussion of any matter, a representative may rise to a point of order, and the point of order shall be immediately decided by the President in accordance with these rules of procedure. A representative of a State Party may appeal against the ruling of the President. The appeal shall be immediately put to the vote, and the President's ruling shall stand unless overruled by a majority of the States Parties present and voting. A representative rising to a point of order may not speak on the substance of the matter under discussion.

### Rule 46

### Time-limit on speeches

The Meeting may limit the time to be allowed to each speaker and the number of times each representative may speak on any question. Before a decision is taken, two representatives of States Parties may speak in favour of, and two against, a proposal to set such limits. When the debate is limited and a representative exceeds his allotted time, the President shall call him to order without delay.

### Rule 47

### Closing of list of speakers and right of reply

During the course of a debate, the President may announce the list of speakers and, with the consent of the Meeting, declare the list closed. He may, however, accord the right of reply to any representative if a speech delivered after he has declared the list closed makes this desirable.

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## Rule 48

### Adjournment of debate

During the discussion of any matter, a representative may move the adjournment of the debate on the question under discussion. In addition to the proposer of the motion, two representatives of States Parties may speak in favour of, and two against, the motion, after which the motion shall be immediately put to the vote. The President may limit the time to be allowed to speakers under this rule.

## Rule 49

### Closure of debate

A representative may at any time move the closure of the debate on the question under discussion, whether or not any other representative has signified his wish to speak. Permission to speak on the motion shall be accorded only to two representatives of States Parties opposing the closure, after which the motion shall be immediately put to the vote. If the Meeting is in favour of the closure, the President shall declare the closure of the debate. The President may limit the time to be allowed to speakers under this rule.

## Rule 50

### Suspension or adjournment of the meeting

During the discussion of any matter, a representative may move the suspension or the adjournment of the meeting. Such motions shall not be debated, but shall be immediately put to the vote. The President may limit the time to be allowed to the speaker moving the suspension or adjournment of the meeting.

## Rule 51

### Order of procedural motions

Subject to rule 45, the following motions shall have precedence in the following order over all other proposals or motions before the meeting:

(a) To suspend the meeting;

(b) To adjourn the meeting;

(c) To adjourn the debate on the question under discussion;

(d) To close the debate on the question under discussion.

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## Rule 52

### Initial documentation

The initial documentation of the Meeting shall consist of the report of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea under paragraph 10 of resolution I containing recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea and all other relevant documentation of the Preparatory Commission.

## Rule 53

### Proposals and amendments

Proposals and amendments shall normally be submitted in writing to the Secretariat, which shall circulate copies to the delegations. As a general rule, no proposal shall be discussed or put to the vote at any meeting of the Meeting unless copies of it have been circulated to all delegations in the languages of the Meeting not later than the day preceding the meeting. The President may, however, permit the discussion and consideration of amendments, or of motions as to procedure, even though such amendments and motions have not been circulated or have only been circulated the same day.

## Rule 54

### Decisions on competence

Subject to rule 51, any motion calling for a decision on the competence of the Meeting to adopt a proposal submitted to it shall be put to the vote before a decision is taken on the proposal in question.

## Rule 55

### Withdrawal of motions

A motion may be withdrawn by its proposer at any time before voting on it has commenced, provided that the motion has not been amended. A motion thus withdrawn may be reintroduced by any representative.

## Rule 56

### Reconsideration of proposals

When a proposal has been adopted or rejected, it may not be reconsidered at the same Meeting of States Parties unless the Meeting, by a two-thirds majority of the States Parties present and voting, so decides. Permission to speak on a motion to reconsider shall be accorded only to two representatives of States

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Parties opposing the motion, after which it shall be immediately put to the vote.

### Rule 57

### Consideration of financial or administrative implications

Before the Meeting takes a decision or makes a recommendation the implication of which might have financial or administrative implications, it shall receive and consider a report from the Secretariat on such implications.

## XII. DECISION-MAKING

### Rule 58

### Voting rights

Each State Party shall have one vote.

### Rule 59

### Participation of international organizations [5]

Notwithstanding rule 58, the participation of an international organization referred to in article 305, paragraph 1 (f), of the Convention, shall in no case entail an increase of the representation to which its member States which are States Parties would be entitled, including rights in decision-making.

### Rule 60

### Elections of the Members of the Tribunal

The Members of the Tribunal shall, in accordance with article 4, paragraph 4, of the Statute, be elected by a two-thirds majority of the States Parties present and voting, provided that such majority includes a majority of the States Parties.

### Rule 61

### Consensus

The Meeting shall make every effort to ensure that all its substantive decisions are taken by consensus or general agreement.

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[5] Consistent with article 4, paragraph 4, of Annex IX of the Convention.

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### Rule 62

### Decisions on questions of substance

Subject to rule 61, decisions on all matters of substance shall be taken by a two-thirds majority of the States Parties present and voting.

### Rule 63

### Decisions on questions of procedure

1. Except as otherwise provided in these rules, decisions on all matters of procedure shall be taken by a simple majority of the States Parties present and voting.

2. If the question arises whether a matter is one of procedure or of substance, the President shall rule on the question. An appeal against this ruling shall immediately be put to the vote and the President's ruling shall stand unless the appeal is approved by a majority of the representatives present and voting.

### Rule 64

### Decisions on amendments to proposals relating to questions of substance

Decisions of the Meeting on amendments to proposals relating to questions of substance, and on parts of such proposals put to the vote separately, shall be made by a two-thirds majority of the States Parties present and voting, provided that such majority includes a majority of the States Parties participating in the Meeting of States Parties.

### Rule 65

### Meaning of the phrase "States Parties present and voting" and of the term "States Parties participating"

1. For the purposes of these rules, the phrase "States Parties present and voting" means States Parties present and casting an affirmative or negative vote; States Parties who abstain from voting shall be considered as not voting.

2. Subject to the provisions of rules 16 to 21 and without prejudice to the powers and functions of the Credentials Committee, the term "States Parties participating" in relation to any particular Meeting of States Parties means any State Party whose representatives have registered with the Secretariat as participating in that Meeting of States Parties and which has not subsequently notified the Secretariat of its withdrawal from that Meeting of States Parties or part of it. The Secretariat shall keep a register for this purpose.

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## Rule 66

### Method of voting

1. The Meeting shall, in the absence of mechanical means for voting, vote by show of hands or by standing, but a representative of any State Party may request a roll-call. The roll-call shall be taken in the English alphabetical order of the names of the States Parties participating in the Meeting of States Parties, beginning with the State Party whose name is drawn by lot by the President. The name of each State Party shall be called in any roll-call, and one of its representatives shall reply "yes", "no" or "abstention". The result of the voting shall be inserted in the record in the English alphabetical order of the names of the States Parties.

2. When the Meeting votes by mechanical means, a non-recorded vote shall replace a vote by show of hands or by standing and a recorded vote shall replace a roll-call vote. A representative of a State Party may request a recorded vote. In the case of a recorded vote, the Meeting shall, unless a representative of a State Party requests otherwise, dispense with the procedure of calling out the names of the States Parties; nevertheless, the result of the voting shall be inserted in the record in the same manner as that of a roll-call vote.

## Rule 67

### Conduct during voting

After the President has announced the commencement of voting, no representative of a State Party may interrupt the voting, except that representatives of States Parties may interrupt on a point of order in connection with the actual conduct of the voting.

## Rule 68

### Explanation of vote

Representatives of States Parties may make brief statements consisting solely of explanations of their votes before the voting has commenced or after the voting has been completed. The President may limit the time to be allowed for such statements. The representative of a State Party sponsoring a proposal or motion shall not speak in explanation of vote thereon, except if it has been amended.

## Rule 69

### Division of proposals and amendments

A representative of a State Party may move that parts of a proposal or of an amendment be voted on separately. If objection is made to the request for

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division, the motion for division shall be voted upon. Permission to speak on the motion for division shall be given only to two speakers in favour and two speakers against. If the motion for division is carried, those parts of the proposal or of the amendment which are approved shall then be put to the vote as a whole. If all operative parts of the proposal or of the amendment have been rejected, the proposal or the amendment shall be considered to have been rejected as a whole.

### Rule 70

### Order of voting on amendments

When an amendment is moved to a proposal, the amendment shall be voted on first. When two or more amendments are moved to a proposal, the Meeting shall first vote on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom, and so on until all the amendments have been put to the vote. Where, however, the adoption of one amendment necessarily implies the rejection of another amendment, the latter amendment shall not be put to the vote. If one or more amendments are adopted, the amended proposal shall then be voted upon. A motion is considered an amendment to a proposal if it merely adds to, deletes from or revises part of the proposal.

### Rule 71

### Order of voting on proposals

If two or more proposals relate to the same question, the Meeting shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted. The Meeting may, after each vote on a proposal, decide whether to vote on the next proposal.

### Rule 72

### Elections

All elections of officials of the Meeting shall be held by secret ballot unless otherwise decided by the Meeting.

### Rule 73

### Restricted balloting for one elective place

1. When one person or one State Party is to be elected and no candidate obtains in the first ballot the votes of a majority of the States Parties present and voting, a second ballot restricted to the two candidates obtaining the largest number of votes shall be taken. If in the second ballot the votes

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are equally divided, the President shall decide between the candidates by drawing lots.

2. In the case of a tie in the first ballot among more than two candidates obtaining the largest number of votes, a second ballot shall be held. If on that ballot a tie remains among more than two candidates, the number shall be reduced to two by lot and the balloting, restricted to them, shall continue in accordance with the preceding paragraph.

### Rule 74

### Restricted balloting for two or more elective places

When two or more elective places are to be filled at one time under the same conditions, those candidates, not exceeding the number of such places, obtaining in the first ballot the majority required shall be elected. If the number of candidates obtaining such a majority is less than the number of persons or States Parties to be elected, there shall be additional ballots to fill the remaining places, the voting being restricted to the candidates obtaining the greatest number of votes in the previous ballot to a number not more than twice the places remaining to be filled; provided that, after the third inconclusive ballot, votes may be cast for any eligible person or State Party. If three such unrestricted ballots are inconclusive, the next three ballots shall be restricted to the candidates who obtained the greatest number of votes in the third of the unrestricted ballots, to a number not more than twice the places remaining to be filled, and the following three ballots thereafter shall be unrestricted, and so on until all the places have been filled.

### Rule 75

### Equally divided votes

If a vote is equally divided on matters other than elections, a second vote shall be taken at a subsequent meeting which shall be held within forty-eight hours of the first vote; and it shall be expressly mentioned in the agenda that a second vote will be taken on the matter in question. If this vote also results in equality, the proposal shall be regarded as rejected.

## XIII. SUBSIDIARY BODIES

### Rule 76

### Establishment

1. The Meeting may establish such subsidiary bodies as it deems necessary for the exercise of its functions.

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2. The composition and competence of each subsidiary body will be determined by the Meeting.

## Rule 77

### Rules of procedure of subsidiary bodies

Unless otherwise decided by the Meeting, these rules apply, mutatis mutandis, to the proceedings of subsidiary bodies, except that:

(a) The Chairman of a subsidiary body may exercise the right to vote;

(b) The presence of representatives of a majority of the members of any subsidiary body shall be required for any decision to be taken.

# XIV. ELECTIONS TO THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

## Rule 78

### Elections

The elections of the members of the International Tribunal for the Law of the Sea shall take place in accordance with the Statute of the Tribunal.

## Rule 79

### Eligibility for re-election [6]

The members of the International Tribunal for the Law of the Sea shall be eligible for re-election, provided, however, that of the members elected at the first election, the terms of seven members shall expire at the end of three years and the terms of seven more members shall expire at the end of six years.

## Rule 80

### By-elections [7]

If the office of a member of the International Tribunal for the Law of the Sea becomes vacant, the Meeting shall, in accordance with rule 78, elect a member for the remainder of his [or her] predecessor's term.

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[6] Consistent with article 5, paragraph 1, of Annex VI.

[7] Consistent with article 6 of Annex VI.

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## XV. ADMINISTRATIVE AND BUDGETARY QUESTIONS

### Rule 81

### Regulations for financial administration

The Meeting shall establish regulations for the financial administration of the International Tribunal for the Law of the Sea.

### Rule 82

### Proposed periodic budget

The Meeting shall consider and approve the proposed periodic budget of the International Tribunal for the Law of the Sea submitted by the Tribunal.

### Rule 83

### Contributions 8/

The Meeting shall decide on the terms and the manner in which States Parties and the Authority shall contribute to the budget of the International Tribunal for the Law of the Sea.

## XVI. AMENDMENTS

### Rule 84

### Method of amendment

These rules of procedure may be amended by a decision of the Meeting taken by a two-thirds majority of the States Parties present and voting, after the General Committee has reported on the proposed amendment.

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8/ Consistent with article 19, paragraph 1, of Annex VI.

LOS/PCN/SCN.4/WP.16/Add.10
12 August 1994

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEABED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 4
New York, 1-12 August 1994

# PROVISIONAL REPORT OF SPECIAL COMMISSION 4

(DRAFT REPORT OF THE PREPARATORY COMMISSION UNDER PARAGRAPH 10 OF RESOLUTION I CONTAINING RECOMMENDATIONS FOR SUBMISSION TO THE MEETING OF STATES PARTIES TO BE CONVENED IN ACCORDANCE WITH ANNEX VI, ARTICLE 4, OF THE CONVENTION, REGARDING PRACTICAL ARRANGEMENTS FOR THE ESTABLISHMENT OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA)

## Addendum

## Election of the Members of the Tribunal - Review of alternatives

(Working paper prepared by the Secretariat)

## Explanatory note

Special Commission 4 requested the Secretariat to prepare a working paper reviewing the alternatives for the election and equitable distribution of the seats of the Members of the International Tribunal for the Law of the Sea (hereinafter referred to as "the International Tribunal") among the regional groups while securing the representation of the principal legal systems. Such a review was intended to serve the meeting of States Parties convened following the entry into force of the Convention for the first election of Members of the Tribunal.

The request to the Secretariat for the preparation of the working paper required that it be appended to the report of the Preparatory Commission and submitted directly to the Meeting of States Parties. The Special Commission did not consider it necessary to review the paper presented.

Given the requirements laid down in the Convention, the present working paper attempts to identify relevant experience in elections to, and in the composition of, specially relevant organs or bodies of the United Nations where the combination of such requirements exists. The principles applied to the distribution of seats in representative bodies on the basis of membership of the regional groups has also been taken into account. Accordingly, the present report identifies the alternatives, including alternative approaches, bearing in mind the present status of ratifications of the Convention and the prospective participation in it, on a universal basis, by all States and entities entitled to do so. The current membership of the United Nations has also been taken into account.

While the report of the Preparatory Commission together with the documents constituting addenda thereto were being finalized, it became evident that the Secretary-General's initiative to facilitate universal participation in the Convention offered the prospect of achieving positive results. Consequently the Secretariat took into account the developments emanating from that consultative process and reviewed and revised this paper prior to its issuance.

It is to be noted that the working paper is not an attempt to provide conclusions, establish positions or present a definitive proposal. It merely provides indicative options when taking into account the relevant criteria.

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## I. BACKGROUND

1. Special Commission 4 took up the question of the composition of the Tribunal and its chambers, noting that the Convention provides that in the Tribunal as a whole the representation of the principal legal systems of the world and equitable geographical distribution shall be assured. 1/ The issues were considered on the basis of document LOS/PCN/SCN.4/1984/CRP.3. 2/ The preliminary exchange of views on the questions of representation and distribution helped to identify the issues to be resolved. 3/ However, the Special Commission expressed the view that firm and detailed rules should not be established by the Preparatory Commission. 4/

## II. REPRESENTATION OF THE PRINCIPAL LEGAL SYSTEMS

2. While in the case of the Tribunal as a whole, the representation of the principal legal systems of the world is to be assured, the Statute of the Permanent Court of International Justice merely required the electors to bear in mind that the principal legal systems of the world should be represented on the whole body of the Court. 5/ The International Court of Justice has elements of both of these requirements without the insistence to be found in the Statute of the Tribunal. The electors are to bear in mind that in the whole body of the Court, representation of the principal legal systems should be assured. 6/

3. The review of these issues, which was carried out by Special Commission 4, while underlining the need to ensure that the principal legal systems of the world would be represented on the Tribunal, took into account that such representation could be partly achieved in the process of distribution of seats among the five regional groups. 7/

4. It was also noted that there were relevant instances in the United Nations system where the representation of the principal legal systems of the world was a requirement. These are to be found in the composition of the International Court of Justice and the International Law Commission. However, in neither of these cases is there a combination of requirements, i.e., a requirement of representation of the principal legal systems together with that of equitable geographical distribution.

5. Although the composition of the International Court of Justice does not require equitable geographical representation, over the years the distribution of nationalities represented on the Court has changed with the nature of the international community to better reflect those changes in its membership. The composition of the International Law Commission since its forty-fourth session in 1992 is as follows: African Group, 10; Asian Group, 9; Latin American and Caribbean Group, 6; Eastern European Group, 3; and Western European and Other States Group, 7. The Asian Group includes representatives from China and Japan, while the Group of Western European and Other States includes a representative from the United States of America. 8/

## III. GEOGRAPHIC DISTRIBUTION

6. The further requirement of the Statute of the Tribunal which is not reflected in the Statutes of either the Permanent Court or the International Court of Justice is that of equitable geographic distribution, which is also to be assured in the body as a whole. In addition, no two Members of the Tribunal may be nationals of the same State; and a person who for the purposes of membership in the Tribunal could be regarded as a national of more than one State shall be deemed to be a national of the one in which he ordinarily exercises civil and political rights.

7. The Statute provides for 15 seats to be equally distributed among the geographic groups as established by the General Assembly of the United Nations. 9/ It specifies that there shall be no fewer than three Members from each geographical group. This would require therefore that 15 seats be first allocated on an equal geographic basis and that the distribution of the 6 additional seats be adjusted to achieve equitable geographical distribution among the regions.

## IV. CONSENSUS AND EQUITABLE GEOGRAPHIC REPRESENTATION

8. From the earliest stages of the Conference, the need for equitable geographical distribution in the constitution of the Tribunal was brought out. It appeared that many countries, especially those which had become independent after the establishment of the International Court of Justice, did not regard its composition as adequately reflecting the international community. 10/ It was also the hope and aspiration of the Conference that the Convention would be adopted by consensus that included all the groups. Thus, when presenting the first draft negotiating text on the settlement of disputes, the President of the Third United Nations Conference on the Law of the Sea, recorded that

> "To ensure that the composition of the law of the sea tribunal takes into account the consensus arrived at in reaching the law of the sea convention by the various groups participating in the consensus, an attempt has been made to formulate a method of selection of the judges of the tribunal reflecting this consensus (see annex IC, art. 3). It is only in this way that the regional groups could feel a real sense of participation in its functions and thus ensure their willingness to accept it." 11/

The consensus contemplated at that time could be likened to the universality sought in the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982.

9. The desirability of achieving universal participation in the Tribunal has been repeatedly expressed. The General Assembly in its resolution 263 of 28 July 1994 notes in the first preambular paragraph thereof that the Assembly was prompted by the desire to achieve universal participation in the Convention and to promote appropriate representation in the institutions established by it. This includes, importantly, the representation in the International Tribunal for the Law of the Sea.

10. It is also significant that as of 16 November 1994 the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (hereinafter referred to as "the Implementation Agreement") may enter into force 12/ or may be applied provisionally pending entry into force. 13/ In either event, the provisions of the Agreement would apply to several States which are not yet parties to the Convention.

## V. REQUIREMENTS OF DISPUTE SETTLEMENT PROCEDURES

11. The dispute settlement provisions of the Convention require the establishment and functioning of the Tribunal, which has a central position within the dispute settlement procedures under the Convention. The dispute settlement provisions under Part XI of the Convention provide for the exclusive jurisdiction of the Tribunal in relation to some disputes pertaining to that part. The situation is unchanged by the Implementation Agreement. That Agreement reconfirms the applicability of the dispute settlement procedures under the Convention, for instance, as provided in section 3, paragraph 12 of the annex to the Agreement. Furthermore, the Seabed Disputes Chamber is required to provide advisory opinions on the conformity with the Convention of proposals before the Assembly if a request is submitted to it. Voting on such proposals is to be deferred pending the receipt of the advisory opinion. 14/

12. On the assumption of consensus or universal participation in the Convention, the composition of the Tribunal at the elections should reflect equitable geographic distribution. In such a case, a scheme of distribution of seats based on the membership of the United Nations may be considered to be appropriate. If such an arrangement is agreed upon, it would also take into account the possibility that additional States may become parties after entry into force and prior to the first election. There is the further possibility that, immediately preceding the first election, a State which may have deposited its instrument of acceptance will await the 30-day period for the Convention to enter into force for it. 15/

13. It is significant that there is precedent which by analogy could be seen to permit a State, pending entry into force of its instrument of ratification, to participate in elections on condition that the States parties waive the time-period in question. In a commentary on the Convention 16/ it is noted that:

> "... On the other hand, it would seem that the date of entry into force for a particular State would be relevant for article 298, paragraph 1 (a) (voluntary exclusion ratione temporis of certain delimitation disputes from Part XV, section 2 [cf. article 308, paragraph 2]). In that connection, it may be assumed that a State (or, where relevant, an international organization) which becomes a party to the Convention within the 30-day period envisaged in article 308, paragraph 2, before the date on which the action contemplated in the previously mentioned articles is to be taken, will not be a party to the Convention until the expiration of the 30-day period following the deposit of its instrument. Its voting rights would be affected accordingly, although in the case of elections, a decision by the existing parties waiving the effect of the 30-day rule could be seen as compatible with the spirit of article 308." 17/

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## VI. GEOGRAPHICAL REPRESENTATION IN RELATION TO THE UNITED NATIONS

14. There are many instances of equitable geographic distribution in the practice of the United Nations. 18/

15. The membership of the United Nations, as of 20 August 1993, was 184 States: Africa - 54 States (28.64 per cent); Asia - 49 States (26.48 per cent); Latin America and the Caribbean - 34 States (18.37 per cent); Eastern Europe - 21 States (11.35 per cent); and Western European and Other States - 26 States (14.05 per cent). As of 20 August 1993, Estonia and Uzbekistan did not belong to any regional group. Non-members of the United Nations which have signed the Convention and/or the Final Act but which are not included in the above geographical grouping are Nauru, Tuvalu, the Holy See, Switzerland and the European Union (or EEC).

16. Thus, for the purposes of the Tribunal, the distribution of seats on the basis of United Nations membership may be determined by multiplying the number of seats (21 Members) by the percentage for representation for each region as follows: Africa, 6; Asia, 6; Latin America and the Caribbean, 4; Eastern Europe, 2; and Western European and Other States, 3. However, since a minimum of 3 seats is assured to each geographical group, 19/ this scheme of distribution cannot be applied.

17. Nevertheless, such a methodology may be applied to the distribution of the additional 6 seats after the 15 assured seats are equally distributed among the five regional groups. The basis for the allocation of the six additional seats may be determined by multiplying the above percentages by the available seats, i.e., 6. The result would be 1.71 for Africa; 1.58 for Asia; 1.10 for Latin America and the Caribbean; 0.68 for Eastern Europe; and 0.84 for Western European and Other States. It would thus appear from this and the earlier calculation that the six additional seats could be allocated as follows: Africa, 2; Asia, 2; Latin America and the Caribbean, 1; and Western European and Other States, 1.

18. Based on that computation and bearing in mind that each group must be given 3 Members as a minimum, the 21 Members of the Tribunal could be composed as follows: 5 from Africa; 5 from Asia, which includes China; 4 from Latin America and the Caribbean; 3 from Eastern Europe; and 4 from Western European and Other States. In this case the representation of the principal legal systems prevalent within each region must be addressed concurrently with regional representation.

19. The pattern of elections of Members of the Tribunal is based on a cadence of elections. In the first election 7 Members would be elected for a term of nine years, 7 for a term of six years and 7 for a term of three years. In determining the 7 that are to be elected for a term of three years, if those were to include the additional 6 seats beyond the 15 guaranteed by geographical distribution of 3 seats per region, then the election of the 7 seats at the time of re-election three years later could be brought in line with States which are actually parties to the Convention at that stage. The distribution of those 7 seats would reflect the adjustment necessary to ensure equitable geographic distribution among the States parties to the Convention at that time.

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20. It is to be noted that the three-year period would nearly coincide with the period of provisional application under the terms of the Agreement for the Implementation of Part XI. By these means it will be possible to ensure that the geographic distribution of Members of the Tribunal is consonant with the provisional application of Part XI and not inconsistent with the requirements of geographical distribution assured by it.

## Notes

1/ Annex VI, art. 2, para. 2.

2/ The Chairman's summary of discussions is contained in document LOS/PCN/SCN.4/L.1.

3/ LOS/PCN/SCN.4/L.1, para. 5.

4/ See LOS/PCN/SCN.4/WP.16, chap. I, sect. 2.

5/ Article 9 of the Statute of the Permanent Court of International Justice provides that "at every election, the electors shall bear in mind that not only should all the persons appointed as members of the Court possess the qualifications required, but the whole body also should represent the main forms of civilization and the principal legal systems of the world". (emphasis added)

6/ Statute of the International Court of Justice, Article 9.

7/ See LOS/PCN/SCN.4/L.1, para. 4.

8/ See the report of the International Law Commission on the work of its forty-fourth session (Official Records of the General Assembly, Forty-seventh Session, Supplement No. 10 (A/47/10)), chap. I.A, para. 2:

African Group: Algeria, Gabon, Madagascar, Mali, Morocco, Senegal, Sierra Leone, Sudan and Uganda;

Asian Group: Bahrain, China, Cyprus, India, Indonesia, Japan, Jordan, Sri Lanka and Turkey;

Latin American and the Caribbean Group: Argentina, Brazil, Chile, Guatemala, Jamaica and Mexico;

Eastern European Group: Bulgaria, Czechoslovakia and the Russian Federation;

Group of Western European and Other States: Australia, France, Germany, Iceland, Italy, United Kingdom of Great Britain and Northern Ireland and United States of America.

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9/ Annex VI, art. 3, paras. 1 and 2.

10/ See Myron H. Nordquist, United Nations Convention on the Law of the Sea, 1982 - A Commentary (Dordrecht/Boston/London: Martinus Nijhoff Publishers, 1989), p. 344.

11/ Official Records of the Third United Nations Conference on the Law of the Sea, vol. V (United Nations publication, Sales No. E.76.V.8), document A/CONF.62/WP.9/Add.1, para. 30.

12/ In accordance with art. 6 of that Agreement.

13/ In accordance with art. 7 of that Agreement.

14/ Article 159, para. 10, of the Convention.

15/ Article 308, para. 2, of the Convention.

16/ Nordquist, op cit., p. 210, para. 308.15.

17/ As a possible analogy, compare with the opinion of the United Nations Secretariat of 28 September 1983, regarding the increase in the composition of the Economic and Social Council, reproduced in United Nations Juridical Yearbook, 1973, p. 149.

18/ The distribution of seats in the several committees, commissions and other bodies of the United Nations that have specialized functions or those that are primarily financial or budgetary were not considered to be appropriate and have not been taken into account.

19/ Annex VI, art. 3, para. 2.

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